THE

MADRAS REVENUE REGISTER.

No. 7.] MADRAS:—FRIDAY, JULY 15, 1870. [Vol. IV.

THE COLLECTOR OF A DISTRICT.
III.

In our last article on this subject, we endeavoured to represent the heavy burden, and the inexpediency of that burden, imposed on a Collector in requiring him to communicate with various officials in his district. Let us now endeavour to form some conception of his correspondence with his superiors. This, of course, is of a much more pressing character, and is also very extensive and very varied in its subject-matter, the bulk of which would, however, disappear if the Collector were transformed into a Commissioner as we have proposed; for the bulk of it consists in letters to and from the Board. Even the mere list of his correspondents would be enough to frighten most people. There is the all-powerful Chief Secretary; there is the politico-economical author of Madras Famines; and there are the wet and dry Secretaries (as we trust we may without offence designate the distinguished Engineers who now hold those offices) in the Public Works Department. There is the mild and courteous High Court, and the fierce remorseless Board with all its insatiable satellites; there are Accountants General and Deputy Accountants General, Commissioners of Currency and Commissioners of Examinations, Court of Wards, Registrars General, Superintendents of too many departments to admit even of mention here, with Conservators of Forests, and Inspectors, and Directors General *ad infinitum;* and all of them requiring immediate replies to all their somewhat varied communications; and all these replies to be written by the same ill-fated scribe of a Collector. For it must be observed that the system allows for nothing in the shape of a Secretary; and, indeed, the feeling is rather against the clandestine use of such makeshifts, as Providence might seem to have especially provided in the way of well-trained English clerks and literary wallahs.

So far, we have been engaged in considering what may be called the written consequences of his work. We come now to his ordinary relations towards the people themselves, or, in other words, to his real work in life; and to find out what this is, we have only to turn to that admirable volume from which all his inspiration comes, the Bible of Madras Collectors, the Standing Orders of the Board (by Dalyell). But our readers would be weary indeed were we to transcribe one-half of what is written in that book as the whole duty of a true Collector. We shall content ourselves, therefore, with the *Index;* and, if our readers feel disposed (as is not impossible) to protest against even *that,* let them only reflect what *his* feelings must be as he

Digitized by Google

vainly struggles with the whole vast volume "interleaved and annotated up to date." For the whole of it must be mastered if he is ever to become the model Collector; and our readers should remember that the whole of it is written in that terse and *concentrated* language for which the Board (and its Secretaries) have always been distinguished.

In the first place, then, Collectors are "to report upon (*i. e.*, criticise) the draft "Acts published in the *Gazette*," and "to "co-operate with the Educational Depart-"ment." Their duties as Judicial officers acting under Regulation IV of 1831, (relating to claims to grants of land, &c., for services rendered to the State); under Regulation VI of the same year, (in suits for hereditary village offices, of which offices there are probably many thousands in each district); under Regulation IX of 1822, (in cases of malversation by Revenue officials, of whom again there are many thousands, and most of them rather given to malversation), and in sundry other miscellaneous proceedings, such as those held under the Boundary Act, the Act for the settlement of disputes about water, and, above all, the Rent Act, are next just alluded to, and they are directed in all such cases "to "record their decisions in English." Then, after some general cautions as to what they are *not* to do, the Index proceeds to direct them "to exercise careful control "over the Salt Department, and to visit the "pans periodically," (along a coast line generally of about one hundred miles). Then, after an incidental remark that Collectors will be held strictly (*i. e.*, personally) responsible for stamp defalcations, we are told that they are "to decide the value of stamps to be "affixed on unstamped or insufficiently "stamped deeds." Proceeding from stamps to General Revenues, they are warned that they "are *held responsible* for any culpable "negligence in disposing of (*i. e.*, collect-"ing) balances" (arrears of revenue), and are told that "certain (*i. e.*, important) "sales of land are to be conducted in their "presence." They are "to examine Taluk "Treasuries unexpectedly;" and then our Index flies off somewhat erratically to law-suits to which Government is a party; and we find that "public servants are responsi-"ble for sums adjudged against them in "such suits for acts founded on their "official reports." Then, in the matter of correspondence, they are "to examine the "lists of arrears at frequent and stated "intervals;" and it should have been added that they are "to open all vernacular cor-"respondence themselves and, of course, "have it read to them then and there." They are further to go on circuit as often as possible; are "personally responsible for "the correctness of the accounts;" and are "to receive petitions and complaints regu-"larly," and *always* be accessible to *every one.*

To sum up briefly, a Collector is to be the steward of an estate larger and more populous than any county in England, except perhaps two or three, being at the same time as Chief Magistrate responsible for the peace of it. So much for the entries in the Index under the head "Collector." We shall get a more enlarged and exhaustive view of his duties if we skim through the Index, and note in the briefest possible way the subjects with which he is expected to be familiar. There is, first, the Abkari, no small responsibility of itself; second, the accounts, elaborate and voluminous to a degree, which, being spread over nine or ten treasuries at an average distance of say thirty or forty miles from his head quarters, call for a good deal of activity, if the supervision is to be *personal* as the rules assume it to be. Third, comes the Cattle Trespass Act in force in some thousand villages, each with its pound and pound-keeper, and an elaborate system of accounts to be juggled in connection therewith.

Digitized by Google

Fourth, Act VI of 1857, (now Act X of 1870,) which provides the procedure necessary when land is taken possession of for Government purposes. Fifth, the Stamp Act, the most abstruse, intricate, and incomprehensible, as well as the most changeable of all Acts, with rules innumerable, ostensibly for his guidance, but really resulting in his greater and more irretrievable bewilderment. Sixth, the Revenue Act, (II of 1864). Seventh, the Rent Act, most burdensome of all to a Collector whose district happens to have been cursed with a good deal of permanent settlement. And here, we will leave him for a time, as the novelists leave their heroes, in the most critical condition at the end of the monthly number. No one who has not had some experience of it knows, or can imagine, how the *Revenue* administration of many districts groans under the unnatural burden imposed upon it by this terrible Act, which, in fact, has raised all our Divisional Revenue Cutcherries into Civil Courts for the trial of *the* most intricate and perplexing questions of proprietary right. Indeed, we have no hesitation in saying that any Revenue officer in Madras, who has had but a few years' experience of this Act, would settle the Irish land question and administer the subsequent law with the greatest possible ease. The issues that would arise there would be simply *childish* in their truthfulness, compared with those he disposes of every day in this country.

A BRIEF HISTORY OF MYSORE.

We find on our table a modest little book, entitled "The History of Mysore," by P. Krishna Row of the Mysore Commission. The compiler distinctly informs us in his preface that he lays no claim to originality, the work being condensed by him from the large and expensive histories by Colonel Wilkes and others, as a cheap abridgment for the use of schools.

The narrative opens with the romantic legend of the origin of the Royal Family of Mysore, and closes with the events of about twenty years back during the lifetime of the late rajah. In the absence of the necessary records, it is not easy to fix the date of the beginning, and thus say at what period two young brothers of the Royal House of Vijayannuggur left their home and, wandering south towards Mysore, founded a new dynasty in that fertile territory. A number of independent chiefs appear at this time to have occupied the land, each one of whom believed himself to be a royal potentate, amenable only to the Viceroy of the distant Vijayannuggur. Chronology first comes to our aid in 1507, when a prince, surnamed the Six-fingered, ascended the throne. A number of princes reigned successively, many of whom appear to have been brave and warlike men. In 1687 we first meet with the name of Eccoji, that terrible warrior so well known in the annals of Southern India. He had obtained possession of Bangalore and offered it to Chick Deo Raj, the then reigning monarch of Mysore, for three lacs and thirty thousand rupees. It is amusing to note that, while they were haggling about the price, an officer of the Emperor Aurungzebe seized the subject of contention and sold it to the Rajah of Mysore, thus leaving Eccoji minus Bangalore and his money to boot. The fortunes of Mysore varied with the varying characters of its princes; but there is little worthy of notice till the rise of the famous Hyder Ali, who first distinguished himself at the siege of Devanahully in 1749, when in the service of the Prime Minister of Mysore. It appears that the great-grandfather of Hyder came from the Punjaub, and settled somewhere in the region about Hyderabad. Futtay Mahomed, Hyder's father, was, however, born at Seera, and, having

Digitized by Google

commenced life as a common peon, experiencing many ups and downs of fortune, attained the rank of Naik under the Nawab of Seera, in whose service he died. At the time of his father's death, Hyder and his elder brother, Shabaz, were young children; but, notwithstanding the defenceless condition of these poor children and their widowed mother, the son of the Nawab, in whose service the father had lost his life, robbed the widow and orphans of all that they possessed. This injury Hyder, at least, never forgot or forgave. The elder brother, Shabaz, eventually obtained a small command in the army of Mysore, and Hyder served under him as a trooper. Hyder distinguished himself by his valour and rose to a small command; and he was from time to time promoted, till he obtained the superior position of Governor of Dindigul. He was as corrupt in his administration as he was brave in battle, and he soon amassed a large private fortune. Subsequently Hyder made an attack on Madura and Tinnevelly, which was successfully repulsed by Mahomed Issuf on behalf of the British. From this fruitless expedition Hyder returned to Seringapatam, where a different task awaited him. The management of affairs had long been in the hands of two brothers, Nunj Raj and Deo Raj, who monopolized all real authority in the kingdom, reducing the rajah to a mere puppet. Against this tyranny the rajah rebelled, and, during the disturbances that followed, the pay of the troops fell into arrears, and the whole revenue system lapsed into the greatest confusion. The rajah and his two powerful ministers were ultimately reconciled, but the finances could not be so easily restored to a satisfactory footing. At this juncture one of the brothers, Deo Raj, died, and Nunj Raj at last threw up his task in disgust, and saddled Hyder and his great friend and adviser, Khunday Row, with the re-arrangement of the finances. Hyder was quite equal to this emergency. With great skill he extricated the Government from its fiscal difficulties: he dismissed the superfluous troops, first seizing on their wealthiest leaders as mutineers, and confiscating their property for the purposes of the State. On this Hyder and his troops were entrusted with the custody of the fort and palace, and he further obtained the jaghire of Bangalore, besides honours and titles. In 1759 Hyder repelled a Mahratta invasion, and as usual turned it to his own profit: by tendering his personal security for sixteen lacs to the Mahrattas, they resigned to him personally, instead of to the Government, the lands which were to have been given up, but for which the Government was too impoverished to pay. Now comes the story of intrigue which led to Hyder's complete accession to power and rule. The queen dowager was anxious to get rid of Nunj Raj, who was still prime minister: she contrived to transfer the office from him to Khunday Row, Hyder's friend and retainer. The occasion on which this was effected was a mutiny among Hyder's troops, who were terribly in arrears of wages. Khunday Row became dewan, and Hyder received fresh assignments of territory to enable him to pay his troops, which now made his possessions more than half of the whole kingdom. He then joined the French in an endeavour to expel the British from Arcot, sending the bulk of his troops to aid the former. About this time the old dowager repented having abased Nunj Raj, and persuaded Khunday Row to aid her in her present desire to depose Hyder, who was encamped at that very time with an insignificant force under the guns of the fort. The attempt failed; for, though attacked by the Mahrattas, who were hired by the dowager, and exposed to the fire of the fort, Hyder contrived to escape to Bangalore, and, returning in a little time with

Digitized by Google

troops, gave battle to Khunday Row. Strange to say, Hyder so worked on the feelings of Nunj Raj, that he was the very man from whom he received reinforcements and all possible assistance. Khunday Row was defeated and fled; and the rajah, under the advice of the various officials, gave up his raj to his imperious vassal, reserving to himself a jaghire of only three lacs of rupees. The unfortunate prince begged Hyder to extend his mercy to Khunday Row, to which request Hyder replied by promising to take care of him like a parrot. The rajah understood this to mean with care and kindness; but Hyder set his own interpretation on it, confining the unhappy traitor in an iron cage and feeding him with rice and milk!!!

Thus the orphan child and subsequent friendless adventurer secured to himself immense wealth and an ancient throne. Hyder's successes were many and brilliant; among his conquests must be specially mentioned that of Bednore, by which he was enriched to the extent of twelve millions sterling! Soon after his accession to the throne of Mysore, Hyder encountered the British, and waged war with them with varying success until peace was concluded, to obtain which each party relinquished all it had gained from the other. A subsequent war with the Peishwar sadly contracted the adventurer's dominions; but his star was still in the ascendant, and he soon gained more than his former possessions. He fought the English again in 1780, on which occasion Madras received her third visit of Hyder's famous flying horse. Hyder's glory had by this time fully culminated, and was now fast waning before the superior arms of the advancing British power. After some successes on Hyder's part, Sir Eyre Coote and Sir Edward Hughes turned the tide of victory. Hyder was decisively routed on the 1st July 1781, and about the same time his equally famous son Tippoo was repulsed at Wandewash by Captain Flint. The British were again successful at Sholinghur, but were routed by Tippoo in Tanjore. In 1782 Hyder breathed his last, being succeeded in the kingdom he had usurped by his son Tippoo, who carried on the legacy of warfare with the British which his father had left him. In 1791 Bangalore was taken by the British, and Lord Cornwallis pursued Tippoo to the very walls of Seringapatam. Various hill forts were taken or surrendered, and then Lord Cornwallis attacked Seringapatam and forced Tippoo to flee. In 1792, on the junction of the Madras and Bombay armies, Seringapatam was regularly invested; but the belligerents decided its fate by negotiation—Tippoo was to cede half his dominions, and pay three crores and thirty lacs of rupees; Tippoo's two sons were to be delivered up as hostages for their father's good faith. They were kindly treated by the wise and humane Cornwallis, and, after residing two years in Madras, were restored on their father completing the fulfilment of his promises. Tippoo might now have ended his days in peace, but he burned with the desire to expel the British from India. On the discovery of his design by the Governor-General, fresh hostilities commenced; and in 1799 General Harris passed the frontier. On the 4th May 1800 Seringapatam fell, and Tippoo—the terrible and great—was slain in the confusion. A portion of the heritage of Mysore was then bestowed on a descendant of its ancient Hindu rajah, while the remainder was divided among the British and their allies. Tippoo's two sons were removed to Vellore, and received liberal allowances. Old Poorniah, the celebrated treasurer, first of Hyder and afterwards of Tippoo, became dewan to the young rajah, and proved as faithful to him as he had been to the Mahomedan usurpers. Of course, all things could not at once

Digitized by Google

become tranquil as if by magic; but after many difficulties and dangers, with Poorniah as Dewan, Colonel Close as Resident, and Wellesley as Military Commander, Mysore entered on the season of peace, happiness, and prosperity, which belongs to the history of our own days.

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

The Select Decrees of the Madras Sudr Udalut from 1805 to 1826 are now out of print. They contain much valuable information not easily within the reach of the practitioner. It has been suggested to us, and we gladly avail ourselves of the suggestion, to reproduce the more important of these decisions from time to time in our columns. We propose, therefore, to bring out in this branch of our Reporter selected judgments treating of, or bearing upon, revenue questions; while such as discuss questions of a purely legal character will find their proper place in the columns of the *Jurist*.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

SIR,

Will you be so kind as to favour me with a solution of the following query through the medium of your well-known journal? If so, you will confer a boon on all persons that may labour with me under the difficulty of solving it.

The latter part of Section 33 of Madras Act VIII of 1865 runs as follows, "If the "arrear, with interest and costs of distress and "sale, be satisfied by the sale of a portion of "the property, the distress shall be imme-"diately withdrawn as respects the remainder. "When the property put up to auction may "sell for more than the amount of the arrear, "the overplus, after deducting expenses of "process, interest, and a sale commission of six "and one quarter per cent., shall be paid to "the defaulter."

Some of the Revenue authorities of long experience hold that no sale commission is to be deducted when the property put up to auction sells for less than the amount of the arrear, and are even acting under that impression. They maintain that there can be no reason for omitting the words "sale commission" where interest and other charges are specified in the former sentence, and for expressly mentioning the same in the following sentence, for the first, nay, the last time in the Act, and that, when speaking of an *overplus* alone; and that the legislature has taken special care to mention it in this particular place with a view to guard against the possibility of a different construction.

With due deference to the opinion of the above authorities, I beg to state that I cannot see the force of their reasoning when I consider the reasons that govern the opposite construction that is in favour of deducting sale commission when the property sells for less than the arrear. Those who favour this construction advocate that the legislature, having felt the necessity of meeting the cases of overplus, enacted that the same should be paid to the defaulter after deducting expenses of process, interest, and a sale commission of six and one quarter per cent., the deductions here named being simply a repetition of the charges mentioned in the former sentence. Here they have the authority of Mr. Norton (758) *Redendo singula singulis*, namely, referring particular expressions to their own antecedents. Thus the words "expenses of process" correspond with "costs of distress," "interest" with "interest," and "sale commission of six and one quarter per cent." with "costs of sale." The force of this reasoning depends, as you will observe, on construing the words "costs of sale" for a sale commission of six and one quarter per cent., for any other construction will involve a departure from the rule of equity with which we should legally presume the legislature always deals, *expressio unius est exclusio alterius*. For instance, if costs of sale in the former sentence be assumed to mean any other costs than a sale commission, such costs cannot be deducted in cases of overplus, since no other costs of sale than a sale commission is mentioned in the latter sentence, while the same may be deducted in cases where there is no overplus, as appears from the preceding sentence. This is absurd. Of course, the legislature could not have meant that the Government is to forego a source of revenue when there is no overplus and to levy the same when there is, for the services of a Government Officer are no less required in one case than in the other. In determining the spirit of an Act, "the consequences of any

Digitized by Google

particular exposition will be most properly considered and weighed for the purpose of avoiding absurdity."

I beg to remain, Sir,

Your most obedient servant,

INQUIRER.

CHETTERPUR, }
5th June 1870. }

The section is perhaps rather loosely worded; but it seems to be clear that costs of distress and sale, including commission, or covered by such commission, are to be recovered in either case.—ED. *R. R.*

HIGH COURT—MADRAS.

(Appellate Side.)

SCOTLAND, C. J., AND COLLETT, J.

Suit for exchange of puttah and muchilka—Enhancement—Construction of Clause 4, *Section* 11, *Act VIII of* 1865.

Where a Zemindar sued his ryots, under Act VIII of 1865, *to compel them to accept a puttah at enhanced rates of assessment, on the ground that he had, at his own expense, repaired a tank and rendered the land (formerly cultivated as punjah) capable of being cultivated as nunjah, it was found that the improvement had really been made by the Zemindar, and that an additional value had been thereby imparted to the lands—*

HELD *that the question whether the landlord had a right to raise the rent depended upon the right construction of the first branch of the proviso to Clause* 4, *Section* 11 *of the above Act; that, assuming that the improvement fell under such proviso, the right of plaintiff to raise the rent depended upon, first, whether he had obtained the previous sanction of the Collector, and secondly, whether the Government had levied additional revenue from him in consequence of such improvement; and that, as both these conditions failed in this case, the judgment of the lower Court in dismissing the plaintiff's suit was sound in both respects.*

S. A. 546 *of* 1868.

Saitu Rajah *v.* Iyaruppa Naiken and Sandama Naiken.

THE plaintiff brought two suits before the Acting Head Assistant Collector of Madura to compel the defendants to accept puttahs and exchange muchilkas. The defendants, inhabitants of Keelagoody, objected to accept the puttahs offered them, on the ground that they were incorrect. Some *stalls* which were punjah had been entered as nunjah, and a nunjah or half varum assessment was demanded. The plaintiff was the landholder by purchase of all the nunjah lands in Keelagoody. He asserted that the land entered in the puttah was nunjah, and formed part of the ayacut of the Keelagoody *Rammai.* The Head Assistant Collector, Mr. McWatters, seeing that the main point in issue was whether the land entered in the puttah were punjah or nunjah, went to Keelagoody and inspected it. He was clearly convinced that it was all nunjah land, and he found that it was so entered in the Huzur accounts. He admitted that, owing to the state of the tank for many years, defendants had often been allowed to cultivate punjah crops on their nunjah land. The plaintiff had, however, repaired the tank at considerable expense to himself, and was, therefore, Mr. McWatters thought, justified in demanding that the whole ayacut of the tank should be treated as nunjah. The Rent Recovery Act VIII of 1865 gave power to landlords to raise their assessments in proportion to the improvements made. In this case the plaintiff had supplied the means of again cultivating the land as nunjah after it had long deteriorated into punjah for want of water. Mr. McWatters was, therefore, of opinion that the terms of the puttah were proper and just, and that plaintiff could demand the nunjah assessment for the lands cultivated by defendants. From this decision the defendant appealed to the Civil Court of Madura. Mr. Sharpe, the Civil Judge, remarked—first, that Collectors were undoubtedly allowed some irregularities of procedure, but that when separate plaints were presented against separate tenants for separate lands, separate judgments should be passed even if they were only copies of each other; second, the Collector had allowed the rents to be raised because the plaintiff had repaired the tank at a considerable expense. This might be done under Section 2, Act VIII of 1865, but only in cases in which additional revenue had been demanded by Government from the landholder. No such extra revenue had been levied in this case, and the Acting Head Assistant Collector was not authorized to raise the rents. There was also no evidence that the tank had been repaired by plaintiff, nor that the value of the lands had risen in consequence. Mr. Sharpe, therefore, reversed Mr. McWatters' decision in so far as it directed defendants to accept a puttah and execute a muchilka at higher rates than that formerly paid by him. From this decree the plaintiff appealed to the High Court. Sunjiva Row for the appellant. Johnstone for the respondent.

Digitized by Google

The High Court delivered the following
Judgment:—3rd May 1870.

In this case a Zemindar sued before the Collector, under Madras Act VIII of 1865, to compel his tenants, the defendants, to accept a puttah at enhanced rates of assessment on the ground that he had, at his own expense, repaired a tank and rendered the land formerly cultivated as punjah or dry land capable of being cultivated as nunjah or wet land. The finding upon the issues sent down by this Court shows that the improvement has been executed at the expense of the landholder, and that thereby additional value has been imparted to the lands. The question whether the landholder has now in consequence a right to raise the rent upon the lands, depends upon the right construction of the first branch of the proviso to Clause 4, Section 11 of Madras Act VIII of 1865. Assuming that the improvement in the present case is one of those contemplated by the proviso, and it seems to be a strong instance of such, the right of the plaintiff to raise the rent would seem to depend upon two conditions—first, that he has obtained the sanction of the Collector to raise the rent; and secondly, that an additional revenue is levied from him consequent upon the improvement made. As to the first condition there can, we think, be no doubt that it is a condition precedent to a suit to compel acceptance of a puttah at an enhanced rent. It was urged that practically the Collector has given his sanction by deciding in favour of the plaintiff. But the object of the suit is to compel acceptance of the puttah, and it is obvious that until the sanction of the Collector is first obtained the right to enforce acceptance of such a puttah does not exist, and the subsequent judgment of the Collector cannot impart the sanction which is antecedently requisite to the right to sue. We have no doubt that the legislature has interposed the Collector between the landholder and the ryots, in order on the one hand to guard against prejudice to the cultivator by fanciful or unprofitable projects of the landlord, to prevent the ryot from being (as the phrase is) improved out of his estate or holding, and, on the other hand, to secure the landholder from being deprived of a fair return for a really desirable improvement of which the ryot takes the benefit. A ryot with a permanent right of occupancy ought not to have forced upon him, at the mere will of the landholder, some speculative improvement which, though it may add somewhat to the market value of the land, may at the same time alter the character of the farm and render the ryot's holding, when burdened with the enhanced rent, a far less profitable investment of his capital and labour than it was in its former condition. On the other hand, the ryot might in some instances unjustly avail himself of his peculiar rights of occupancy to take the benefit without sharing with his landlord in the burden of a thoroughly desirable improvement. It seems to us that the very important and by no means easy task of arbitrating between the landholder and his ryots on such occasions, has been imposed by the legislature on the Collector in the first instance at least. It is clear that in the present case the landholder has not obtained the previous sanction of the Collector to the raising of the rent; and this objection is fatal to his present suit.

But it seems desirable that we should say something in regard to the second condition of the right to raise the rent, because it was on this ground alone that the lower Appellate Court dismissed the plaintiff's suit. It was contended for the plaintiff, that it is only when the improvement has been made at the expense of Government, that the right to raise the rent depends upon the condition that an additional revenue is levied from the landholder. The use of the word "and" in the sentence "and for which, &c.," was relied upon in support of this contention. The sentence appears to be very loosely framed; and in almost any construction of it, the word "and" seems to be superfluous and inaccurate. The additional revenue when levied is not *for* the works or improvements executed, but *for* or on account of the additional value thereby imparted to the lands; and, if the words "for which" relate to the "additional value," then clearly the condition that an additional revenue is levied holds whether the works were executed at the expense of the landholder or of the Government. But if the words "for which" were intended, with some laxity of language, to relate to "works of irrigation or other improvements," then there is no ground on which they must be limited in their relation to either the one or the other only of the two kinds described: the form of the sentence permits their being equally applied to both. It was said that the Government could only be supposed to intend to exact an additional revenue when the additional value had been imparted at their sole expense. This may be so, but certainly such intention has not been clearly expressed, and we ought not to hold, except on very clear words, that the Government have deprived themselves of the right to a fair share in the increased produce of the land, though not directly brought about by State expenditure. Though it is not indispensable for us to decide the point, we think it right to express our opinion that the ground on which the lower Appellate Court dismissed the plaintiff's suit is a sound one. The decree below must be affirmed, and this special appeal dismissed with costs.

Digitized by Google

SCOTLAND, C. J., AND COLLETT, J.

Landlord and tenant—Puttahs—Poligars—Definition of landholder—Act VIII of 1865.

Where a Poligar sued to compel his tenants to accept puttahs, the Civil Judge, reversing the order of the Sub-Collector, dismissed the suit on the ground that the holder of an unsettled polliem had only a life-estate and could not come within Section 1 *of Act VIII of* 1865, *and that he could only come in under Section* 13 *as paying direct revenue to Government.*

HELD *that Act VIII of* 1865 *contemplates two classes of landholders, of whom the first consists of Zemindars and others to whom the old Puttah Regulation XXX of* 1802 *formerly applied, who receive revenue from their tenants and pay a fixed yearly sum to Government called Peshcush; that the second class comprises those who hold land under the Ryotwar system and pay Government the full revenue assessed on their lands; and that Poligars, like Muttahdars who are not named, come within Class* 1 *under the words* other Zemindars, *as they stand, during the continuance of their life-estate, in the same relation to Government on one side, and their tenants on the other, as Zemindars of hereditary estates.*

S. A. 254 *of* 1869.

Chowki Gounden *v.* Venkataramier and another.

THE plaintiff, the Poligar of Shulagherry, sued the defendants before the Sub-Collector of Salem for an order directing them to accept a puttah for the lands specified in the plaint. The Acting Sub-Collector, Mr. Price, found that the lands referred to in the plaint were in the possession of defendants, and that they had been called upon by the plaintiff to receive a puttah for the same. Defendants admitted that the assessment of the padukal lands was correct, but they urged that 20,000 gulies of poremboke land was in a great measure unfit for cultivation; that the assessment on it was not just; that they did not know whether the extent of the ground was really 20,000 gulies, (for in the ayacut accounts it was entered as 1,000 gulies); and further, that a former poligar rented the whole village, and granted a puttah for it, to one Papi Gounden for Rupees 25 *per annum*, so that the defendants, who had acquired his rights, were entitled to hold the land on the same terms. As to whether the defendants were bound to accept a puttah or not, the Sub-Collector found that, as the land was in their possession and they were unwilling to give it up, they were certainly bound to accept the puttah. They had in no way troubled themselves to ascertain the extent of the land: the second defendant admitted that he had received a notice from the plaintiff to attend and see it measured, but he did not think fit to go. The ayacut accounts referred to by defendants could not be found in the taluk nor in the Collector's cutcherry, but from a certified copy of the pymash accounts it was shown that the land was then entered as 20,000 gulies. The plaintiff had measured the land and found it to be 39,671 gulies of land. The Sub-Collector arrived at the opinion that, as waste lands were almost invariably found to be inadequately estimated in the pymash accounts, and as the indifference of the defendants in not being present at the recent measurement was so extraordinary, the real extent of the poremboke lands was probably as stated by plaintiff. He held that the plaintiff was in that case entitled to demand that defendants should accept a puttah for the excess thus discovered. The rent claimed by plaintiff was shown to be the average of all classes of assessed lands in the village. The plaintiff had the power, under Clause 4, Section 2 of Act VIII of 1865, to arrange his own terms about rent of waste lands, and there could be no fairer way of settling the assessment of so large a piece of land than taking the average of all the assessed lands in the village. As to the grant by the former poligar of the village for Rupees 25 per annum, the Sub-Collector was of opinion it could not bind the present poligar. First, the Shulagherry polliem being an unsettled estate and not devolving from father to son, but each holder taking his estate in it as a tenant-at-will of Government, no rental at lower rates than those assessed on similar neighbouring lands could bind either the Government or the successor of the poligar who rented out the lands. Secondly, even if this agreement had been a cowle as defendants wished to hold it, still from the wording of it it had not been given *bonâ fide* for the purpose of re-claiming and permanently improving the waste lands, and, therefore, was not binding on the successor of the grantor. For all these reasons the Sub-Collector held that defendants were bound to receive a puttah from plaintiff for the lands specified in the plaint, and also for the excess which had been brought to light by the measurement of the Kassu Kavali Poremboke lands. The Civil Judge of Salem, Mr. Chamier, reversed this decision on appeal, on the ground that the plaintiff had no proprietary right in the land. He could not, therefore, exchange puttahs and muchilkas. A poligar to whom an absolute

Digitized by Google

title had been conveyed by Government would be a Zemindar within the meaning of Sections 1 and 3, Act VIII of 1865; but the holder of an unsettled polliem was only a life-tenant, and had no proprietary right in the estate. Mr. Chamier, therefore, thought that the plaintiff could only avail himself of the Act by coming in under Section 13 as a landholder paying revenue direct to Government. He, therefore, reversed the decision of the Sub-Collector, and dismissed plaintiff's claim with costs. From this decree plaintiff appealed to the High Court. Rama Row for appellant, Strinavassa Chariar for respondent.

The High Court delivered the following

Judgment:—23rd February 1870.

This was a suit brought before a Collector to enforce the acceptance of a puttah under Madras Act VIII of 1865. In Section 1 of that Act the definition of "landholders" apparently divides them into two classes, having different rights under the Act. The first class can compel the interchange of puttahs and muchilkas as provided by the Act, but the second class have only the rights given to them by Section 13. The plaintiff in the present case is the poligar of an unsettled polliem, and the Collector compelled the defendants as tenants to accept a puttah from him. The Civil Judge held that the plaintiff fell within the second class of "landholders" and was consequently not entitled to sue to compel the acceptance of a puttah, and his suit was dismissed accordingly. The terms of the definition in Section 1 are certainly far from explicit; but apparently it was intended to include in Class 1 of "landholders" all landholders to whom the old Puttah Regulation XXX of 1802 was applicable. There can be no doubt that that Regulation was intended to include, and in practice was always acted upon as including, poligars; and we think that poligars like muttahdars, who are also not named, were intended to be comprised in Class 1 of the definition under the words "*other* Zemindars," that is, other than those who hold by an istimrar sunnud. The poligar of an unsettled polliem may, according to the generally received theory as to his rights, have only an estate for life in his polliem; but for such an estate as he has, his relation to the Government on the one side, and to the occupiers of lands within his polliem on the other side, resembles that of a Zemindar. He receives from the ryots who have certain customary rights of occupancy his share of the income or produce derived from their lands, and pays to the Government a certain fixed sum short of this amount under the denomination of peshcush. It seems to have been intended to include in Class 1 besides those who pay a mere quit-rent to Government, (which is so far an extension of the old Puttah Regulation,) and the farmers of the land revenue from Government, properly so-called, and farmers of lands under Zemindars, all who, like Zemindars, occupy in some degree the position of middlemen between the occupants of the land and the Government, and pay to the Government a fixed sum called peshcush, being something short of the total revenue calculated as receivable from the lands comprised within their estates; and to include in Class 2 those who, whether under the ryotwar settlment or otherwise, pay direct to Government what is really the full land revenue assessed on their holdings. In this view, as to the correct construction of the definition, the plaintiff in the present suit was entitled to bring it, and the appeal must now be remanded to the lower Appellate Court in order that it may be disposed of upon the merits. The plaintiff is entitled to his costs of this special appeal, and the other costs will abide the result of the suit.

HIGH COURT—CALCUTTA.

PEACOCK, SIR B., *Kt.*, C. J., and LOCH, KEMP, MACPHERSON, and MITTER, J. J.

Akhoy Sankar Chuckerbutty (defendant) *v.* Raja Indra Bhusan Deb Roy (plaintiff.)*

Suit for a kabuliat—Enhancement of rent—Act X of 1859, *Sections* 4 *and* 13.

In order to entitle a landlord to sue for a kabuliat, he must tender a patta.

A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, *Section* 13.

THIS suit was brought in the Court of the Deputy Collector of the district of Jessore.

It was stated in the plaint that in the village of Magoorah, within the plaintiff's zemindari, an unsettled holding at a rent of Rupees 26 was recorded as being in the defendant's occupancy; but that the defendant was in occupation of 48 bigas 19 katas of land under cover of the above holding, and consequently held a considerable quantity of land at an inadequate rent. Plaintiff instituted this suit to obtain a kabuliat from the defendant at a rent of Rupees 79-4-0, alleging that the amount was calculated at the prevailing rate of rent paid for adjacent lands of a similar description throughout the pergunnah. No notice was served as required by Section 13, Act X of 1859, before the institution of the suit, nor did the plaint state from what date the kabuliat asked for should commence; but no objection appeared to have been raised on these points before the Deputy Collector. The defendant urged that, within the

* Special Appeal, No. 1,522, of 1868, from a decree of the Officiating Additional Judge of Jessore, dated the 30th March 1868, reversing a decree of the Deputy Collector of that district, dated the 31st December 1866.

Digitized by Google

village mentioned by the plaintiff, he had a permanent mirassi holding at a rent of Rupees 26; that he had paid the rent thereof at a uniform rate for a period of more than twenty years; that it was, therefore, not capable of enhancement; that the amount of land so held by him was only 41 bigas 2 katas; and that the rate of rent paid for adjacent lands was 1 rupee per biga for homestead, and 8 annas per biga for *mattan* or meadow lands.

The Deputy Collector fixed the issues, and in his decision, dated 31st December 1866, found that the defendant's holding was recorded in the name of one Brajakishor Roy, who had died twenty-five or twenty-six years previously, at an age variously stated at from 70 to 72 years; that it was, therefore, "not improbable that Brajakishor "Roy had become of age before the time of the "decennial settlement, and acquired the holding "in question at that time;" that certain dakhilas produced by the defendant for the years 1265, 1266, 1267, (A. D. 1852, 1853, 1854,) were authentic and genuine; and generally on the evidence that the defendant had paid rent for his holding for twenty years at a uniform rate of Rupees 26, and that he was, therefore, entitled to the benefit of Section 4 of Act X of 1859. He dismissed plaintiff's suit.

The Officiating Judge of Jessore reversed this decision on the ground that the defendant had not proved that he had paid rent at a uniform rate for twenty years.

The defendant then appealed to the High Court on the following grounds:—

First.—That the suit for a kabuliat will not lie, as there was no previous tender of a patta as required by Section 9, Act X of 1859.

Second.—That plaintiff has failed to mention in his plaint the period for which he demands the kabuliat.

Third.—That no notice was served as required by Section 13, Act X of 1859.

Fourth.—That the lower Court was wrong in holding that a uniform payment of rent for twenty years was necessary under Act X of 1859, for the law only requires the tenant to prove that the rate of rent has not been changed for the last twenty years, which had been proved; and

Fifth, generally on the merits.

In support of these grounds the following cases were cited:—*Gobind Lall Seal* v. *Kinoo Koyal,** *Umbica Churn Pottro* v. *Boidanauth Pottro,*† *Pertab Chunder Banerjee* v. *Philippee,*‡ *Troyluckhonath Chowdry* v. *Kuleema Bibee,*§ *Golam Mahomed* v. *Asmutt Alee Khan Chowdhry,*‖ *Gobind Chunder Addy* v. *Musst. Auloo Beebee,*¶ *Thakooranee Dossee* v. *Bisheshur Mookerjee,*** *Anundloll Chowdry* v. *James Hills,*†† *Doorga Persad Dass Chowdry* v. *Kalee Kinkur Roy,*‡‡ *Munsoor Ali* v. *Bunoo Singh,*§§ *Modhoo Soodun Chowdry* v. *Ram Mohun Ghar,*‖‖ and a decision of the Sudr Court at Agra, dated March 31st, 1863, cited in Irvine's Rent Digest, 149.

* Marsh, 400.
† 1 W. R., 81.
‡ 2 W. R., Act X Rul, 56.
§ Ibid, 96.
‖ Case No. 1,175 of 1867, March 19th, 1868.
¶ 1 W. R., 49.
** Case No. 2,064, June 19th, 1865.
†† 4 W. R., Act X Rul., 33.
‡‡ 5 Ibid, 88.
§§ 7 W. R., 282.
‖‖ 8 W. R., 473.

The Court (Loch and Mitter, J. J.) held that the second point taken in appeal was disposed of by the Full Bench ruling in *Golam Mahomed* v. *Asmutt Alee Khan Chowdhry**. As to the fourth and fifth grounds of appeal, the learned Judges said:—"We think on the fourth objection that the "Judge is wrong. The law does not, as supposed "by the Judge, require the ryot to prove uniform "*payment* of rent for twenty years, but (see Section "4, Act X of 1859) to prove that the rent at which "the land is held has not been changed for a period "of twenty years." With regard to the fifth "ground taken in special appeal, we think the "grounds assigned by the Judge for rejecting the "dakhilas to be quite insufficient, particularly "when they had been attested by the person who "gave them, to whose evidence the Judge took no "exception. We forbear to pass any final order "in this case till the result of the reference to the "Full Bench is known."

But as to the first and third grounds of appeal, the learned Judges, considering that the decisions quoted were conflicting, referred the following questions for the opinion of a Full Bench:—

1. Whether the tender of a patta is necessary before the landlord can bring a suit for a kabuliat, &c.

2. Whether a suit for a kabuliat at enhanced rates, without previous service of notice, can lie.

Baboos *Girija Sankar Mazumdar* and *Bungsi Dhur Sen* for appellant.

Baboos *Mati Lal Mookerjee* and *Iswar Chandra Chuckerbutty* for respondent.

The judgment of the Full Bench was delivered by

Peacock, C. J.—I see no reason to change the opinion which I expressed in the Full Bench decision in *Thakooranee Dossee* v. *Bisheshur Mookerjee,** that a landholder cannot sue for a kabuliat at an enhanced rate of rent, without giving the notice required by Section 13 of Act X of 1859. At the time of the Full Bench decision in *Golam Mahomed* v. *Asmutt Alee Khan Chowdhry,*† I certainly thought that I was in a minority in the Full Bench decision in *Thakooranee Dossee* v. *Bisheshur Mookerjee,** the first Full Bench decision to which I have referred. I have no doubt I was misled by the marginal note‡ in that case in which it was said that "a suit for a kabuliat may be "brought without notice of enhancement, (Peacock, "C. J., and Norman, J., dissenting); but, in such a "suit brought without notice, the kabuliat cannot "be decreed, except to commence with the year "following that in which the decree is given." According to my recollection at the time, I thought that that marginal note was correct; but it appears now that there was not a majority of the Judges of the Full Bench in favour of that position; many of the Judges did not express any opinion on that point, and it did not arise in the case. In the Full Bench decision in *Ram Kanth Chowdhry* v. *Bhoobun Mohun Biswas,*§ it was not held that a suit for a kabuliat at an enhanced rent would lie without notice, but merely that a suit

* Case No. 2,064 of 1864, June 19th, 1865.
† Case No. 1,175 of 1867, March 19th, 1868.
‡ 3 W. R., Act X Rul., 29.
§ Case No. 2,216 of 1862, July 7th, 1864.

Digitized by Google

for a kabuliat would lie without notice under Section 13, Act X of 1859. I cannot add much to what I said in the first Full Bench case to which I have referred; but it is clear, as shown by Mr. Justice Norman, that, if the commencement of the action for a kabuliat at an enhanced rate of rent is tantamount to a notice under Section 13, the commencement of the action creates a cause of action which did not exist at the time when the suit was commenced, whereas a cause of action must accrue before a suit can be commenced upon it.

Again, if a notice of enhancement be given under Section 13, six months before the month of Cheit, that notice can merely lie to enhance the rents of the ensuing year. If such notice were given, no suit could be commenced before the ensuing year for enhanced rates for that year, and the ryot under Section 19, knowing that his landlord intended to enhance his rent, might, in or before the month of Cheit after the notice, relinquish the land in respect of which the rent was sought to be enhanced. But if the suit to enhance is tantamount to a notice, it must be commenced in or before the month of Cheit, in order to enhance the rent of the succeeding year; and, if commenced six months before the end of Cheit, all the expenses of the suit might be incurred before the end of Cheit, and the whole expenses of the suit and the vexation attending upon it would be unnecessarily incurred if the tenant in the month of Cheit should give notice of his intention to relinquish the land.

I think it was urged in the course of the argument that, if the suit was brought before the month of Cheit, the tenant would not be allowed to relinquish. But, if that contention is correct, it shows that the commencement of the suit would deprive the ryot of the right to avail himself of the provisions of Section 19 of the Act. It appears to me to be quite clear that a suit to enhance is not tantamount to a notice given before the commencement of the suit.

As to the other point, it appears to me that a suit cannot be brought to compel the tenant to execute a kabuliat unless the landlord has tendered a patta to him, such as he was entitled to receive. Whether after the expiration of the notice to enhance a suit could be commenced to declare what were the fair and reasonable rents, and that the tenant would be bound to execute a kabuliat at those rents upon the landlords executing or tendering him a patta, is a matter on which it is not necessary for me to express any opinion. It was stated in argument that there is a case to that effect decided in the Agra Court. We have not seen the report itself, but merely an abstract of it cited from a text-book.*

The first question must be answered in the affirmative, that, in order to entitle a landlord to sue for a kabuliat, he must tender a patta; and, as to the second question, we hold that a suit for a kabuliat at an enhanced rate of rent cannot be supported without a previous notice under Section 13, Act X of 1859.

The decision of the lower Appellate Court will be reversed with the costs of this appeal and the costs in the lower Appellate Court.—*7th September 1869.—Bengal Law Reports, Vol. IV, Part XIX.*

* March 31st, 1863, cited in Irvine's Rent Digest, 149.

PHEAR AND MITTER, J. J.

Gabind Kumar Chowdhry (plaintiff) *v.* Haro Chandra Nag and another (defendants.)*

Enhancement, notice of—Uncertainty in notice.

Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is sought.

Notice of enhancement to the effect " that, as the rate of rent of the land" (in the occupation of the tenant) " is below the rate prevailing in the pergunnah and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patta lands have been cultivated, I am entitled to receive from you Rupees 794-5-7-11½ per annum," was held to be indefinite and uncertain; and, therefore, no suit thereon could lie for enhancement of rent.

THIS was a suit for enhancement of rent after service of notice.

The following is a (literal) translation of an abstract of the notice served on the defendants:—

No settlement having been come to regarding the *nirik* (rate of rent) of the land of the dihis and chaks in the mauzas and kismats of the said taluk mentioned in the schedule, hereunder written, which are in your possession, and the rate of rent of the lands of the said taluks having become equal to the pergunnah rate and the rate of the adjoining lands, that is to say, the capability of production of the said land having increased more than before and the value of the produce having increased, and waste lands having become cultivated of the said 5 annas, 6 gandas, 2 kauris, and 2 krants share, I am *malik* of half, that is, 2 annas, 13 gandas, 1 kauri, and 1 krant share. I am entitled to receive a sum of Rupees 798-5-7-0-11½ krant according to the rate mentioned in the schedule.

The defendants set up *(inter alia)* that the notice had not not been drawn up according to law.

The Munsiff held that under Section 17, Act X of 1859, the notice did not clearly state to what class of ryots the defendants belonged; the notice was insufficient. He accordingly dismissed the suit.

On appeal the Judge held that "a notice stating that the rents were not fixed, and that the defendant did not pay according to the rates for the same kind of lands in the neighbourhood, &c., was not a sufficient notice under Section 51, Regulation VIII of 1793; that the defendant was not a ryot, and the notice could not be in the terms of Section 17, Act X of 1859."

The plaintiff appealed to the High Court.

Mr. *Paul* (Baboo *Ramesh Chandra Mitter* with him) for the appellant.

Baboos *Hem Chandra Banerjee* and *Kishen Dayal Roy* for the respondents.

* Special Appeal, No. 2,549, of 1869, from a decree of the Judge of Mymensing, dated the 20th August 1869, affirming a decree of the Deputy Collector of that district, dated the 7th April 1869.

Digitized by Google

PHEAR, J.—I think that, unless we are prepared to differ from the judgment of a Division Bench of this Court given in *Kali Chandra Chowdhry* v. *Ratan Gopal Bhaduri*,* we must hold that the Judge below was right in his decision.

In this notice the appellant, after first setting out his own zemindari title, says:—"That you are "in possession of the mauzas, kismats, dihis, and "chaks, &c., appertaining to the said taluk as per "schedule given below, without effecting any set-"tlement as to the jumma and executing any "kabuliat in respect of the same; that, as the rate "of rent of the said land is below the rate prevail-"ing in the pergunnah and in adjacent places, and "as the productive powers of the land and the "value of the produce have increased, and as the "*patta* land has been cultivated, I am entitled to "receive from you Rupees 794-5-7-11¼ per annum, "according to the rate specified in the schedule."

It appears to me that this notice is quite as bad for indefiniteness and uncertainty as the notice which was held to be insufficient in *Kali Chandra Chowdhry* v. *Ratan Gopal Bhaduri*.*

It has been argued before us that this notice specifies three grounds of enhancement. If it does so, I think this is done in so uncertain a manner as to leave it impossible to say whether these three grounds have reference to the rates of rents of talookdars, or to the rates of rents of ryots.

The first, namely, that the rate paid for the said land is below the rate prevailing in the pergunnah and in the adjacent places, points in my mind rather to ryoti rates than to talookdari rates; and certainly the inference which one would first draw from the reference to the productive power of the land, to the increase in the value of the produce of the land, and to the increase of culturable land, without further words of explanation, is that the plaintiff had regard to rents payable by ryots rather than to rents payable by talookdars. It is a very long step indeed from increase in the productive power of the land to increase in the rents and profits derived, or capable of being derived, by the talookdar from his talook.

I am inclined to think with Mr. Paul that if a distinct ground of enhancement had been mentioned in the notice, unless it also appeared on the face of the notice that by law that ground could not be maintained, the Court ought not to dismiss the case without going into the merits. It is, I think, the plaintiff's look out to see that he can establish, on the ground which he specifies, a right to receive enhanced rents. We know nothing in this case relative to the evidence which it may be in the power of the plaintiff to give in support of his claim, but I think that the tenant is entitled, on the authority of the case which I have cited and of the other cases therein referred to, to a distinct and specific statement in the notice of enhancement, such as is beyond the reasonable possibility of mistake, of the ground of enhancement on which his landlord relies. I have already said that in my opinion the notice before us does not contain such a distinct statement, and, therefore, it seems to me that the special appeal should be dismissed with costs.

MITTER, J.—I concur in the judgment just delivered by Mr. Justice Phear. I do not think that the rent of a tenure like the present can be enhanced except under positive law or under some custom having the force of law, or by virtue of some agreement between the landlord and tenant. In the present case the notice does not specify any ground of enhancement sanctioned by any positive enactment, or by any custom having the force of law, or by any agreement by which the defendant has made himself liable to pay the enhanced rent which the plaintiff seeks to recover.

---

* *The* 1*st April* 1869.

BAYLEY AND HOBHOUSE, J. J.

Kali Chandra Chowdhry, Zemindar, (plaintiff), *v.* Ratan Gopal Bhaduri and others, (defendants.)*

Mr. *Paul* (with him Baboo *Umerendranath Chatterjee*) for appellant.

Baboos *Srinath Das* and *Rames Chandra Mitter* for respondents.

HOBHOUSE, J.— * * * * * It is then contended that the notice under Section 13 of the Act was a proper notice under that section, and was understood by the parties to be a notice under the provisions of Clause 1, Section 17 of the Act. But we do not think that this can properly be said. The notice did undoubtedly specify the rent which was to be demanded for the coming year, and did also specify a ground of enhancement, *viz.*, the ground that the plaintiff was entitled to an enhancement at the *pergunnah* rates by virtue of the decision of 1855. But that is not of itself a notice within the meaning of Clause 1, Section 17 of the Act. That section requires, if the notice is to be governed by it, that the notice should state that the "rate of rent paid by such ryot is below the prevailing "rate payable by the same class of ryots for land of a "similar description, and with similar advantages in "the places adjacent," or words to that effect, and it does not, it seems to us, follow that, because the rates are *pergunnah* rates, therefore they must be necessarily understood to be rates "below" those prevailing in the adjacent places, and paid by ryots of the same description as the defendants. Neither can we say that the defendants knew that they were pleading to the provisions of Section 17, because they were not allowed an opportunity of adducing witnesses, and we do not, therefore, know exactly what it was that they pleaded to; and, on the other hand, the evidence adduced by the plaintiff was not evidence as to the prevailing rates within the meaning of Section 17, but only as to pergunnah rates which, in our judgment, are not necessarily the prevailing rates, and we agree with the judgment in *Radha Churn Chowdhry* v. *Chunder Monee Shikdar*,* to the effect that the grounds of the notice must be specific so as to show exactly what the grounds are on which the plaintiff seeks enhancement.

In this view of the case we think we cannot say that the Judge was wrong in law when he held that the notice was not a legal notice; and we, therefore, dismiss this special appeal with costs.

We may add that the decision of *Gobind Chunder Dutt* v. *Huronauth Roy*† and that of *Mackintosh* v. *Adur Monee Dossee*‡ seem to bear us out in the view we take of the first part of the case.

---

* Special Appeals, Nos. 2,084 and 3,223, of 1868, from the decrees of the Judge of Mymensing, dated the 4th May 1868, reversing the decrees of the Assistant Collector of that district, dated the 15th November 1867.

* 9 W. R., 290.
† 5 W. R., Act X Rul., 10.
‡ 6 W. R., Act X Rul., 87.

Digitized by Google

Under these circumstances I am clearly of opinion that the notice in this case does not specify any ground of enhancement on which the plaintiff, special appellant, could have enhanced the rents of the tenure in question, and that the present case is precisely similar to that referred to by Mr. Justice Phear. I am of opinion, therefore, that this appeal ought to be dismissed with costs. —*3rd February* 1870.—*Bengal Law Reports, Vol. IV., Part XXII.*

HIGH COURT—N. W. PROVINCES.

PEARSON AND TURNER, J. J.

Alluvial land—Title—Special custom—Equity and justice—

HELD *that where the special rules laid down in Regulation XI of* 1825 *for the adjudication of questions of title to alluvial land are inapplicable and no special custom exists, the decision of the case ought to proceed on general principles of equity and justice.*

Sheogoolam Teewaree, (appellant), *v.* Faqeera Misser and others, (respondents.)

THIS was a special appeal from the decision of Rai Dabee Dyal, Subordinate Judge of Bustee, dated the 5th June 1868, reversing the decree of Mahomed Kamil Khan, Officiating Sudr Ameen of Bustee, dated 18th January 1868.

Baboo *Pearey Mohun Banoorjee* for appellant, the defendant.

Moulvie *Mehndee Hussun*, Lala *Lalita Pershad*, and Lala *Jowala Pershad* for respondents, the plaintiffs.

The present course of the river forms the base of a triangle, of which the sides are represented by the former course of the stream. Near the apex of the triangle—the boundaries of the plaintiffs' and defendant's villages—which are conterminous, and run down to the old course of the stream. The land now in suit is that which is enclosed within the triangle formed by the old and present course of the river. It does not clearly appear whether this land is a reformation by gradual accretion on the site of land, which formerly belonged to the village on the side of the river opposite to the villages of the plaintiffs and defendant, or whether it is, in fact, a slice cut off from the opposite village by a sudden change in the stream. The plaintiffs already hold the deserted bed of the stream which adjoins their village, and the defendant in like manner holds the deserted bed, which adjoins his village. Looking towards the present course of the stream, the land in dispute is in front of the plaintiffs' rather than of the defendant's village; but it equally adjoins the parts of the deserted channel, which are admittedly held by the plaintiffs and defendant respectively. Under these circumstances we hold that the first clause of Section 4, Regulation XI of 1825, does not apply.

Assuming either of the parties to be entitled to the land in suit as land formed by gradual accretion, then it adjoins almost equally the villages of both, and, therefore, the clause above quoted is inapplicable.

We consider the case is not specially provided for by the special rules laid down in the Regulation, and, this being so under the fifth clause of Section 9, in the absence of local custom Courts must proceed on general principles of equity and justice. The decision of the Revenue authorities and of the Court of first instance, by which the plaintiffs and defendant were held to be entitled to the land in equal moieties, appears to us to be more consonant with those principles than the decision of the Principal Sudr Ameen, which awarded the whole of the land to the plaintiffs.

Reversing the decision of the lower Appellate Court, we confirm that of the Court of first instance, and decree that the plaintiffs' suit be dismissed with costs and interest at six per cent.—*5th December* 1868.—*Reports of the High Court, N. W. Provinces, Vol. V.*

SELECT JUDGMENTS OF THE MADRAS SUDR UDALUT.

CASAMAJOR, C. J., AND SCOTT AND HURDIS, J. J.

No. 9 *of* 1807.

Mirassi right—Title founded on a sunnud not produced—

Where a Padre sued claiming the mirassi of certain land on the strength of a sunnud which he did not produce, and where it was found that the resident mirassidars had exchanged puttahs and muchilkas with the Collector—

HELD *that the non-production of so essential a document as the sunnud was fatal to the Padre's claim; that it appeared from the evidence in the case that the land had not been granted to him personally, but to certain Christians called* "new settlers;" *and that his plea that he now sued on behalf of the new settlers would not do, as the Court was guided by what was actually stated in his petition, but not by what he meant to be understood by it.*

PADRE GEORGE MANENTE instituted this suit against the defendants, laying claim to the

Digitized by Google

mirassi of certain land in the village of Mapadoo as having been granted to him on the 1st December 1786 by a sunnud from Government, stated to be in his possession, and enjoyed by him until the 13th July 1796, when he alleged the defendants procured possession by means of a false representation to Mr. Collector Place.

The defendants admitted no part of the plaint. They denied the land ever having been cultivated or enjoyed by the plaintiff. They observed that under any circumstances the claim was improperly brought against them, the three defendants alone, they being only in part owners of the lands sued for. They affirmed that neither the plaintiff nor his Christians were the Mirassidars of the village. They came, they said, to Mapadoo in the year 1787, and measured out some ground for themselves. The plaintiff then rented the whole village for four years, and the Christians carried on the cultivation. At the expiration of the lease the Christians still continued to cultivate forty cawnies, leaving the rest of the land waste. Mr. Collector Place afterwards let out the lands to the inhabitants of the village, and in the year 1797 the tanks having been repaired at the expense of the Government, and the Christians having, when called upon, declared themselves incapable of carrying on the cultivation, Mr. Place took *muchilkas* from the inhabitants, who engaged to cultivate the whole of the *nunjah* land, the Christians at the same time undertaking to cultivate the *punjah* land, in which, however, they failed.

Copy of a letter from the Secretary of the Board of Revenue to the Superintendent of the jaghire was put in on the part of the plaintiff, stating that on Mr. Haliburton's report upon the ground applied for by Padre Manente for the new settlers, it had been resolved to make a distribution of the lands in certain villages, between the old Meeralu inhabitants and the new settlers; and on the part of the defendants, there was filed copy of a sunnud from Mr. Collector Place to the Amildar of Tripassore in confirmation of that part of their defence, wherein it was stated that the tanks of Coovum and Mapadoo had been repaired at considerable expense; that the new settlers had declared their inability to cultivate the *nunjah* lands; and that the original Mirassidars had executed the necessary *muchilkas*.

The Zillah Judge, on the ground of the sunnud from Mr. Collector Place filed by the defendants, non-suited the plaintiff with costs under Section 10, Regulation II, 1802.

Padre Manente appealed to the Provincial Court, and stated amongst other matters that the nunjah land in the village of Mapadoo having been granted to him by the Board of Revenue in pursuance of orders from the Government, Mr. Collector Place was not competent to pass any order affecting the right to the said lands inconsistent with the terms of the sunnud granted to him by the Board.

It appeared to the Provincial Court that a grant of the land had not been made to, or in the name of, the appellant; but that the persons who possibly might be justified in complaining were certain persons denominated "the new settlers," and not Padre George Manente, the appellant was, therefore, by this decree nonsuited with costs. The Provincial Court at the same time reversed the decision of the Zillah Court, holding that the Judge had erred in the application of Section 10, Regulation II, 1802, to the case.

Padre Manente renewed his appeal from the decree of the Provincial Court to the Sudr Court, who observed that the plaintiff had failed to produce the Government sunnud or grant under which he claimed, and the record contained no information in respect of the nature of its contents. An instrument of this description was obviously of the first importance, and it could not have escaped the observation of the plaintiff, with whom alone it rested to prove the goodness and perfection of his title, that the production of such a document, if it were calculated to prove a complete title in him, was essential to the establishment of his claim. But, in proportion as its production might, under such circumstances, have been conclusive of the question, its non-production argued extreme caution on the part of the plaintiff indicative of his conviction that it made rather against, than for, his claim, probably either because it may have been only a lease of the lands for a specific term of years, and not the conveyance of any *real* interest in the land, or because it may have vested in *him*, the plaintiff, no right of property or possession whatever.

Of the documents produced by Padre Manente in the lower Courts, it was remarked—

1*st*.—That the letter from the Secretary to the Board of Revenue to the Superintendent of the jaghire, showed that an application had been received from Padre Manente for ground "for the new settlers;" and that it had been resolved to apportion the lands in the villages of Cattoor, Coovum, and Mapadoo, partly to the Mirassi inhabitants and partly "to the new settlers."

2*ndly*.—That Mr. Secretary White's letter, recorded by the Provincial Court, showed it to have been the intention of the Government to appropriate land to the use of certain new settlers, who, for the purposes of cultivation and manufacture, were to experience every possible aid and encouragement; but it by no means showed it to have been in the contemplation of Government that Padre Manente was to participate in the land intended to be allotted; and, on the contrary, expressly referred

Digitized by Google

him, individually, to the eventual liberality of the Government and the Court of Directors, and

3*rdly*.—That Mr. Collector Clerk's letter was expressive of his anxiety to provide against a neglect of cultivation in the farm of Coovum, of which it had become necessary that he should take immediate charge. And they held out a promise from him that the new settlers should continue to cultivate "the ground mentioned in the new cowle as waste ground."

These letters, if they could be taken as proof of anything, proved only that the Government had come to a determination to allot certain lands in the jaghire to certain new settlers. On what conditions, or with what limitations, the plan was to proceed to effect, was not therein specified. It was clear they did not convey nor imply an intention of conveying any description of right or privilege to Padre George Manente, neither did they contain any direct proof that the measure, which was stated to have been projected in favour of the new settlers, was carried into execution.

Yet, on these letters the appellant rested his claim. They were the only documents on the record by which he sought to maintain his issue. The Court declared their opinion that the evidence produced by the appellant was altogether insufficient to support his case.

With regard to what was advanced by the appellant against the decree of the Provincial Court, namely, that "at once they might have understood that the appellant did not claim the land for his own use" but for the use of his dependents, the Court observed that the Provincial Court, in ascertaining the cause and ground of complaint, were necessarily guided, not by what might be inferred from, but by what was actually expressed, in the petitions. They were specific in demanding the land as *his own*, as having been by sunnud granted to *him*, as having been enjoyed and cultivated by *himself*. Had the new settlers been desirous of trying their title to the land, they might have been represented in the Courts with as much facility as the Mirassi inhabitants; and without committing their cause to a Vakeel not duly empowered, in itself a palpable and unanswerable ground for rejecting the suit *in limine*, had the original plaint justified the Zillah Judge in considering the claim preferred by Padre Manente as made, not on his own account but on that of the persons whom he called his dependents.

Admitting, however, for a moment that this objection was waived; that Padre Manente had appeared as a suitor on behalf of the new settlers; and that it was their title, not his own, which he sought to establish, still it was demonstrable that his failure in the one object had been not less complete than in the other. The documents exhibited proved no absolute right of property to the nunjah land situated in the village of Mapadoo in the new settlers, whilst on the other hand the presumptive evidence of that right was strongly in favour of the respondents and other Mirassi inhabitants of the village, whether derived from occupancy antecedent to the period at which the lands in question may have been disposed of by a lease for years, (which lease necessarily failed at the end and completion of the term), or from the sunnud granted by Mr. Collector Place, or from actual possession, all showing a title in the Mirassi inhabitants, the possessors, which could not possibly be disturbed until defeated by proof of a better.

For these reasons the Court dismissed the appeal, the appellant paying all costs of suit.—*Vol. I, page* 19.

SCOTT AND GREENAWAY, J. J.

No. 2 *of* 1810.

Lakhiraj land—Life-tenure—Regulation XXXI of 1802—

Where Government had granted certain lakhiraj land to A, a Mahomedan, who died leaving a son (M) and a daughter (N), and where D (the son of N) sued B and C (sons of M) for a half share in virtue of his mother, it was found that neither of the parties were entitled to claim the village, because the grant was not hereditary and the purwanah had not been registered agreeably to Section 16, *Regulation XXXI of* 1802; *but*

HELD *that, although none of the parties were entitled as the land had not been granted to A and his heirs, the judgment of the Provincial Court must be confirmed allowing B and C to remain in possession as the Collector had failed to resume for two years.*

THIS suit was instituted in the Zillah Court of Trichinopoly for the recovery of a half share of a lakhiraj village.

The village in question was originally granted to Cauja Aboobuker, who left a son and a daughter, namely, the father of the defendants and the mother of the plaintiff.

The Zillah Court of Trichinopoly held that neither the plaintiff nor the defendants were entitled to the Government share of the produce in the village, "if the Collector of the zillah were to act conformably to Regulation XXXI, 1802," because the grant was not hereditary, nor the purwanah registered agreeably to form; but, as the defendants had been permitted to hold possession of the village notwithstanding their invalid title, it appeared to the Zillah Judge to be just that the plaintiff,

Digitized by Google

as heir to the daughter of the original grantee, should enjoy his mother's share "equally as well as the defendants, on the ground of their being the heirs of his son." He accordingly adjudged to the plaintiff one-half of the Government share of the produce of the village and to the defendants the other half, until the Collector should carry into execution the provisions of Regulation XXXI, 1802, and the defendants were made liable for the costs of suit.

The defendants appealed to the Provincial Court for the Southern Division, who held that the respondent had no hereditary claim whatever to a share, grounding their opinion on a futwah delivered by the Mufti of their Court in another appeal, wherein he had declared that lands exempted from revenue revert to Government on the decease of the person or persons to whom the grant may be made, it being merely a life-tenure; and the Court further held that it would be their duty to direct the Collector to take immediate possession of the village had not the appellants duly registered their claim in the Collector's cutcherry as prescribed by Section 16, Regulation XXXI, 1802, and had not their claim to a life-tenure of the village been tacitly confirmed by the omission of the Collector for the space of upwards of two years to resume the lands on the part of Government. They reversed the decree of the Zillah Court, and adjudged that the appellants should be put in possession of the village; that the produce thereof, for the period during which it was under charge of the Collector, should be accounted for the said appellants; and that the respondent should pay all costs of suit.

The plaintiff appealed from this decree to the Sudr Udalut as a pauper.

They observed that he rested his claim to a moiety of the village on the right which he derived from his mother as the daughter of the original grantee; but it was obvious that, unless the village in question were heritable property, unless it were granted to Cauja Aboobuker *and his heirs*, the descent of the appellant from Cauja Aboobuker would avail nothing towards the establishment of the claim which he set up. That the village was granted to Cauja Aboobuker *and his heirs* nowhere appeared, nor was it averred by either party in the suit. The purwanah No. 17 of the Zillah Court's proceedings, on which the appellant relied, would at the utmost be considered only as granting a life-tenure, and there was no document nor any evidence whatever to show that Cauja Aboobuker was vested with more than a life-interest in the village.

Under these circumstances it was manifest that the appellant possessed no legal claim on the village by virtue of his descent from Cauja Aboobuker, and the Court were of opinion that he had entirely failed to establish any right or title to a share of the village in question, and dismissed the appeal.—*Vol. I, page* 43.

OFFICIAL PAPER.

NANDUR TANK-BED IN THE KISTNA DISTRICT.

Read the following Proceedings of the Board of Revenue, dated 26th January 1870, No. 564:—

Read again endorsement from the Acting Collector of the Kistna District, dated 25th October 1869, recorded in Board's Proceedings of 6th November 1869, No. 8,218.

Read also letter from the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Amaravati, 20th December 1869, No. 380.

I have the honour to forward herewith copy of a letter from the Superintending Engineer, 2nd Division, dated 11th December 1869, No. 228, in which, with reference to Board's Proceedings, dated 6th November 1869, No. 8,218, he states that he has carefully inspected the large Nandur Tank in the Bapatla Talook, and is of opinion that there is no necessity for maintaining it as a reservoir. I, therefore, request sanction for the sale of the area of this tank-bed by auction, as there is likely to be much competition; and this mode of disposing of durkhasts is likely to give general satisfaction.

ENCLOSURE No. 1.

From the Superintending Engineer, 2nd Division, to the Officiating Collector of the Kistna District, dated Camp at Sandole, 11th December 1869, No. 228.

Referring to Proceedings, Board of Revenue, No. 8,218, dated 6th November 1869, I have the honour to point out that according to the Tahsildar's and Curnum's accounts the whole of the bed of the old Nandur Tank, except a low spot some twenty-five acres in extent, was given to the ryots for cultivation at different times, commencing from some period when Mr. Newill was Collector of the Guntoor Zillah.

2. They have relinquished parts at times, and the Tahsildar informs me that he has instructions not to allow land in tank-beds once relinquished to be taken up again. I cannot but think that he has misunderstood the orders.

3. The Nandur Tank covered a large flat space of ground intercepting the drainage of a great area of country and supplied by the old Commamore Channel from the Kistna in fresh. Everything tended to silt it up, and for some years its power of containing water could have been but small. It is so flat that much difficulty was found in draining the parts, more distant from the deep channel close to the tank, which irrigates from its upper parts and drains from its lower. In consequence of this difficulty several of the holdings were relinquished, but it has now been remedied, and the whole extent is commanded by the new Commamore Channel.

4. It is, of course, impossible, under the circumstances I have stated, to use one portion of

Digitized by Google

the space as a tank without flooding the rest, neither is there any necessity for maintaining it as a reservoir. I inspected the tank carefully yesterday.

In the letters above recorded the Acting Collector proposes the abandonment of the Nandur Tank, in the Bapatla Talook, and the sale of the land by public auction.

2. The Superintending Engineer, after personal inspection of the tank, is of opinion that it has become useless as a reservoir, and recommends its being made available for cultivation.

3. The tank is one of those extensive reservoirs which before the construction of the anicut was filled during the high freshes of the Kistna, but it is now so much silted up as to be useless as a tank. Further, the tank is not now needed, as the new Commamore Channel affords an ample supply of water to all the lands formerly dependent on the tank, while the land commanded by the same channel is very valuable on account of the deposit of river silt upon it.

4. The Board, therefore, resolve to recommend to Government that the Collector's proposal be sanctioned as the tank is Government property, and may fairly, therefore, be sold under the principles laid down in Government Order, 7th September 1860, No. 1,545.

5. Should Government be pleased to sanction the proposal, the Acting Collector will be instructed to sell the land in convenient lots, due provision being made for such channels and roads through it as may be requisite for the accommodation of purchasers.

Order thereon, 12th March 1870, No. 357.

The measure proposed by the Board in paragraph 4 of their Proceedings is sanctioned.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

SEASON REPORT.

Northern Section.—There were pretty good rains in Ganjam and the Northern Taluks of Godavery, where at one station a slight fall of hail also occurred. In the other districts the rains were slight and scanty.

Ganjam.—In Ganjam, ryots were engaged in ploughing and otherwise preparing their fields for cultivation.

Vizagapatam.—In Vizagapatam, the cultivation of *sugarcane* had commenced, and the harvesting of *green gram, raggy*, and *gingelly* was in progress.

Godavery.—In the Godavery District, seed-beds were being formed where water was available for irrigation, and *punjah* lands also were to some extent being ploughed and prepared for the reception of seed. The *gingelly* crop was ripe and promised a good out-turn, while *cotton, lamp-oil seeds, tobacco, chillies*, and *choy-root* were already harvested with excellent results. Summer *paddy* under channels and garden products generally were in good condition.

Kistna.—In the Kistna District a heap of straw was burnt up, and a man was killed by a stroke of lightning; but beyond this nothing serious happened from the thunder and lightning which accompanied a lowering sky on the 20th of the month in the Palnad and Santanapally Taluks. All the crops of the last fusli were completely cut and carried, and the *lamp-oil seeds* sown a second time were coming to maturity.

Nellore.—There was little or no fresh cultivation, and the crops already sown also were not in a flourishing condition owing to injuries sustained from the fall of hail-stones, blight, and absence of timely rains. In a few taluks of the district, *pedda-kesari, potti-kesari, iswara-korra*, and some of the dry grains were harvested, but with what results is not reported.

Prices rose in Ganjam, Vizagapatam, and Nellore. In the other districts they were almost stationary.

Public health was good in Ganjam; but not so in Vizagapatam, Kistna, and Nellore, where fever and small-pox were more or less prevalent. In Godavery the case was worse. In addition to the general prevalence of small-pox and measles, cholera broke out in two taluks and carried away forty persons in a single village. Distress also had begun to be felt from the scarcity of water and pasturage in the upland taluks, but measures were adopted to sink good-water wells.

Cattle were not entirely free from disease.

Ceded Districts.—The rainfall was very scanty, and was confined to slight drizzling here and there.

Cuddapah.—Cultivation was still being carried on to some extent under irrigation works in the Cuddapah District, and standing crops were generally doing well. *Paddy, cotton, corra*, and *cholum* were harvested in some localities, but in no case was a satisfactory return realized.

Bellary.—In Bellary, lands under tanks and channels were being cultivated with *sugarcane* and *indigo*; but, notwithstanding this, agricultural operations were very limited owing to the failure of rains. *White cholum, paddy*, and *cotton* were harvested.

Kurnool.—In Kurnool, second *crop paddy* was cut, and *cotton* was being picked. Pasturage was scarce over the greater part of the district.

Prices were rising in Cuddapah, and manifested a similar tendency in Bellary.

There was no cholera, but fever and small-pox were of general prevalence. In Bellary the distribution of fever pills worked some good.

The health of cattle was perfectly good over the greater portion of the Cuddapah District. In the other two districts cattle suffered from disease.

East Centre.—Very little rain fell in this section.

Madras.—Crops were withering and tanks and wells drying up all over the Madras District, except in the Ponnery Taluk, where the unusually copious rains of January had brought a considerable supply of water into the tank.

North Arcot.—In North Arcot, small tracts of land, here and there, commanded by well and channel irrigation, were sown with *gingelly-seed, cholum, raggy*, and *paddy*; but the condition of standing crops was anything but satisfactory, save in the case of *sugarcane* in Palmanair Taluk. *Paddy* and a few dry grains were harvested, but yielded very indifferently.

Digitized by Google

SOUTH ARCOT.—In parts of the South Arcot District, *kad-paddy*, *sugarcane*, *raggy*, *indigo*, and *gingelly-oil seeds* were cultivated. Considerable difficulty, however, was being felt from the scarcity of water for drinking purposes.

Prices remained almost stationary.

Fever, small-pox, and cholera were in existence, but did not seriously affect public health.

There was very little disease among cattle.

CAUVERY.—Rains fell, but in very inadequate quantities.

TANJORE.—In Tanjore, the Cauvery and other rivers were quite dry, and there was no water in the tanks. In some localities *gingelly-seed*, *cotton*, *&c.*, were cultivated in *punjah* lands, while all over the district *sumba peshanam* was harvested with fair results.

TRICHINOPOLY.—In Trichinopoly, *valan paddy*, *cumboo*, and *cholum* were cultivated and *kodaikar* was reaped. The Ayyar river received a good fresh, which went some way to compensate for the very insufficient rainfall.

Prices were almost the same as in the preceding month.

Guinea-worm in Trichinopoly and fever and small-pox in Tanjore were slightly prevalent, but public health, on the whole, did not materially suffer.

Cattle were in tolerably good health.

SOUTHERN SECTION.—There was a slight rainfall during the month.

MADURA.—In the Dindigul and Periakolam Taluks of the Madura District, *cotton* and *indigo* were cultivated, and in other localities *punjah* lands were being prepared for cultivation. The river Vigay received no freshes, the supply in tanks was diminishing, and a general scarcity of water was felt in many parts of the district.

TINNEVELLY.—In Tinnevelly a few dry grains were sown, and the standing crops looked healthy. The *peshanam* crop, *dholl*, and *gram* were harvested, but the out-turn was below the average.

Prices were stationary.

Cholera existed in both the districts of this section, though not in an epidemic form. In other respects public health was good.

Cattle also were for the most part healthy.

WEST CENTRE.—There was a general, but not abundant, fall of rain in this section.

COIMBATORE.—In Coimbatore, *cholum* and *gingelly-oil seeds* were sown. *Varagoo* and *paddy* were harvested, and *cotton* was being picked.

NEILGHERRIES.—On the Neilgherries, *corally*, *samai*, and *raggy* were being sown.

SALEM.—In Salem, tanks received a small supply of water, and *cholum*, *raggy*, *gingelly-seeds*, and *paddy* were cultivated in some localities. A few of the standing crops were injured by attacks of insects, but generally they fared well. *Cotton* and *indigo* plants were reported to be fading from the failure of rains.

Prices were stationary.

Cholera and fever prevailed in Salem and Coimbatore, but not to any great extent. On the Neilgherries the state of health was good.

Cattle suffered from disease in Salem.

WEST.—The rainfall was slight, but there were indications of the setting in of an early monsoon in South Canara.

SOUTH CANARA.—In South Canara the *third-crop rice* and dry grains were completely harvested, and preparations were made for the sowing of the first crop.

MALABAR.—In Malabar the sowing of the kavy or *first-crop rice* commenced.

Prices rose over those of the previous month in South Canara, but were stationary in Malabar.

Fever and small-pox were prevalent to a small extent.

The health of cattle was generally good.

***Average Bazaar Prices of Grain and Salt per Madras Garce, and Rain Report of all the Districts of the Madras Presidency for the Month of April* 1870, *Fusly* 1279.**

DISTRICTS.		Prices of Grain and Sea Salt.												Rainfall.				
		2nd sort Rice.		2nd sort Paddy.		Cholum.		Raggy.		Horse Gram.		Sea Salt.		Northern Section.	Southern Section.	Eastern Section.	Western Section.	Average.
		Fusly		Fusly		Fusly		Fusly		Fusly		Fusly						
		1278	1279	1278	1279	1278	1279	1278	1279	1278	1279	1278	1279					
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Ins.	Ins.	Ins.	Ins.	Ins.
Northern Section.	Ganjam.........	289	263	115	103	197	170	169	121	173	166	297	319	1·20	1·40	0·50	0·60	0·92
	Vizagapatam..	873	299	166	122	217	166	215	155	199	166	254	309	2·0	...	0·30	0·60	0·72
	Godavery.......	282	246	131	105	154	135	156	115	193	185	245	276	0·98	0·07	0·43	0·31	0·45
	Kistna...........	357	322	156	146	178	180	156	156	209	219	281	348	0·27	...	0·07	0·10	0·11
	Nellore	365	841	172	158	156	175	138	153	197	262	263	324	0·11	...	...	0·73	0·21
Ceded Districts.	Cuddapah......	405	419	183	193	180	192	168	172	181	231	312	357	...	0·34	0·09	...	0·10
	Bellary...... ...	377	377	153	157	127	174	110	161	143	196	394	422	...	...	...	0·41	0·10
	Kurnool........	382	417	168	184	149	200	151	188	202	254	331	369	...	...	...	...	...
East Centre.	Madras.........	436	341	197	146	230	240	240	205	264	254	267	296	...	...	...	1·05	0·26
	North Arcot. .	877	327	164	134	183	173	182	167	179	170	241	290	0·70	...	...	0·20	0·22
	South Arcot. .	400	283	189	129	213	126	216	149	216	173	274	315	...	...	...	0·01	0·003
Cauvery.	Tanjore.........	335	265	152	123	179	131	163	126	185	194	256	803	0·37	...	...	...	0·09
	Trichinopoly..	367	296	166	133	157	130	184	136	202	154	264	329	0·75	1·40	0·50	1·08	0·93
Southern Section.	Madura.........	377	362	174	166	151	168	168	158	165	168	282	340	1·97	0·93	1·50	2·50	1·72
	Tinnevelly	366	370	170	172	...	163	176	184	199	230	289	345	0·47	0·80	0·87	1·17	0·83
West Centre.	Coimbatore ...	452	380	218	188	259	254	209	188	238	164	337	387	0·59	1·56	0·31	0·81	0·83
	Neilgherries...	533	640	...	...	291	304	246	304	267	213	400	457	...	...	2·0	2·39	2·19
	Salem...........	355	326	167	144	196	174	168	142	177	143	299	344	0·02	1·00	1·25	0·65	0·73
West......	South Canara.	338	374	145	165	...	...	216	232	266	275	254	284	...	0·30	0·10	0·80	0·30
	Malabar........	407	404	189	186	...	...	180	193	278	263	293	339	0·06	2·80	1·00	1·10	1·24

Digitized by Google

Statement of Cotton and Indigo Cultivation with their Market Prices for the Month of April 1870, *Fusly* 1279.

	DISTRICTS.	Cotton.				Market rate of cleaned Cotton per Candy of 500 lbs.	Indigo.				Market rate of Cake Indigo per Maund of 25 lbs.
		Fusly 1278.		Fusly 1279.			Fusly 1278.		Fusly 1279.		
		Extent.	Assessment.	Extent.	Assessment.		Extent.	Assessment.	Extent.	Assessment.	
	1	2	3	4	5	6	7	8	9	10	11
		Acres.	Rs.	Acres.	Rs.	Rs.	Acres.	Rs.	Acres.	Rs.	Rs.
1	Ganjam ...	63	85	84	98	153	......	....	......	....	72
2	Vizagapatam ...	246	638	1	11	136	181	800	......	....	36
3	Godavery ...	......	......	......	......	182	......	....	......	....	72
4	Kistna ...	......	......	......	......	155	....	....	......	.....	60
5	Nellore ...	......	......	......	......	149	62	308	280	1,209	51
6	Cuddapah ...	......	......	......	......	50 to 166	....	....	529	1,906	40 to 70
7	Bellary ...	......	......	.....	......	163	176	839	80	93	64
8	Kurnool ...	......	......	......	......	158	....	....	....	......	55
9	Madras ...	......	......	......	......	95	16	87	39	127	50
10	North Arcot ...	......	......	......	......	130	720	1,396	314	623	54
11	South Arcot ...	3	7	4	12	*	624	1,204	1,058	1,730	*
12	Tanjore ...	......	......	140	101	156	....	....	....	.....	18
13	Trichinopoly ...	......	......	......	......	133	....	....	....	.....	14
14	Madura ...	13	24	442	629	100	......	....	6	20	40
15	Tinnevelly ...	2,14,437	2,05,228	2,29,206	2,23,342	157	376	384	504	329	31
16	Coimbatore ...	......	......	......	......	131	....	....	....	......	31
17	Salem ...	90	139	152	293	194	10	21	5	14	40
	Total...	2,14,852	2,06,121	2,30,029	2,24,486	......	2,165	4,489	9,815	6,051	......

* Prices not given in the Collector's return.

Revenue Board Office,
Madras, 24*th May* 1870.

(Signed) J. GROSE,
Acting Secretary.

MISCELLANEOUS.

THE PERMANENT SETTLEMENT—BENGAL.

A controversy upon this great and vexed question has again broken out in the press. The controversy has arisen from the persistent opposition of the Zemindars of Bengal to the levy of a local cess upon them for roads and educational purposes. A few years ago they declared the application of the income tax to themselves to be a breach of the Settlement made with them by Lord Cornwallis, and they now resist the levy of proposed local cess upon the same ground. In these circumstances it is absurd to deprecate controversy as to the real nature of the settlement. The Zemindars themselves so interpret that settlement as to claim rights in the soil which the State itself makes no pretensions to in any part of India, while they claim, in virtue of it, immunities which no other class in India, nor even the most ancient freeholder in our own land would venture to assert. In the Bombay Presidency, the land revenue is settled for periods of thirty years. But no landholder in the Western Presidency dreams of claiming exemption from the income tax, or of opposing the levy of extra cesses upon the land for local purposes, on the ground that the land revenue has been settled with him for thirty years. At this moment the Commissioner of the Central Provinces is proposing to levy a very heavy local cess upon Chutteesghur—the land of which has only just been settled for twenty years—for the construction of a railway between Nagpore and Raepore. Does the settlement of the revenue in perpetuity make the least difference in the case? The claim put forward by the Zemindar reduces the State to the dilemma of leaving Bengal destitute of roads and education for all time, or of taxing the people of some other province for the purpose.

The interpretation which the Zemindars place on the Cornwallis' settlement is—

(1.) That it made them absolute owners of the land.

(2.) That it gave them an absolute immunity from direct taxation for all time.

Instead of grappling with these delusions—for they are delusions—and bringing them to the test of exact inquiry, there is a disposition on the part both of Indian statesmen and Indian publicists to accept this interpretation, and while lamenting the error of the settlement to deprecate all interference with it as "a breach of faith." On the other hand, there are writers whose sense of justice is so shocked by these pretensions, that they demand a revision of the settlement at all costs. Thus a correspondent of the *Friend of India* of the 28th April writes:—

Digitized by Google

"The Permanent Settlement is an unlawful engagement and of no effect, because representatives of the people, then living, gave away to certain persons and their heirs after them for ever, that which did not belong to the people of that generation to give away for ever. The law is an unjust law, because it exempts precisely that portion of the community who have benefitted most from the common fund of labour, from contributing their due quota towards the public expenditure; while it levies additional taxes from the bulk of the people—owners of personal property who have not derived from this common fund the amount of benefit which has accrued to real property. The Permanent Settlement Act is a violation of the first principles of justice and taxation, which demand that each individual of the community shall be taxed in proportion to the value of his property, in the enjoyment of which he is secured by the collective industry of the whole community."

The writer, it will be seen, makes the Zemindar a present of all his claims. The framers of the Settlement contrived in some way or other to give what it was not in their power to give, and to grant immunities which it was a violation of all justice to confer. The representations the Zemindar prefers—are admitted; and, shocked by their injustice, an appeal is made to the *summa lex* to overthrow them.

"The cancellation of an unjust law is the paramount duty of Government which exists solely for the administration of equal justice; and a charge of breach of faith would properly lie against the wilful perpetuation of a public wrong, not against the annulment of an unlawful and unjust promise unwittingly made in an age of comparative ignorance. The question, Shall Government be unfaithful to its engagement with the landholders? is answered by the question, Should Government commit the greater "breach of faith," so to say, of unjustly levying taxes on the non-landholders who constitute the bulk of the nation, in excess of the quota for which they are fairly liable? The re-distribution of the public expenditure, by their own representative, in due proportion among the members of the community, is by no means analogous to the repudiation by an interested party of a bond for which a valuable consideration has been received. Change, to be injurious, must be a change from right to wrong, not from wrong to right; a departure from the right path, not the return to it: and, an unlawful engagement which violates higher obligations is an engagement more honoured in the breach than the observance."

This letter has proved the occasion of a widespread discussion. The *Bombay Gazette* was the first to call attention to it; but, while allowing that "there are crises in the lives of States when men are bound to remove an enormous injustice," does not admit that the case of the Zemindars of Bengal is one for the application of the exceptional law, and winds up a declamatory article on the subject as follows:—

"No highflown sophistry can justify a Government in failing to redeem a public pledge, or warrant a revolution in cold blood. We might just as reasonably resume possession of the lands in this island of Bombay, and settle them afresh, on the ground that the representatives of Charles II. permitted themselves to relinquish his rights, as subvert the Permanent Settlement on the ground that Lord Cornwallis was an ignorant man who parted with that which he had not to give. The remedy must be found in some plan that does not involve a flagrant wrong."

The same journal recurs to the question a day or two afterwards to tell us that—

"Whether Bengal pays too much or too little, whether the ryots suffer while the Zemindars revel in riches, really these things have nothing to do with the question—Shall a solemn settlement, actually described as perpetual, cease and determine? If the Zemindars of Bengal pay too little, the proper complement, whatever it may be, must be obtained by some other process than a breach of faith. That is a problem for the Government to solve. So also, if the ryots are hard-pressed, measures may be devised for their relief—that is a separate question. And probably we shall only make a decided step towards the accomplishment of the double aim when the philosophers cease to demand the abrogation of a settlement, distinctly named perpetual, and when, recognizing its indefeasible character, they employ their stupendous abilities in discovering how the Zemindars may be properly taxed, and how the ryots may be released from avoidable suffering."

The *Times of India*, true to its traditions, deals more pertinently with the subject, and, after asserting that the land of Bengal ought to pay "nearly 18 millions sterling instead of the paltry 4 which it now pays," points out "another consideration which impels the demand to have the Bengal perpetual settlement brought to the bar of public opinion."

"We are told that it is a 'sacred contract,' a 'solemn contract;' and the false issue that it is a 'political contract,' is also brought forward. But, if a contract, it is not a one-sided bargain. The Government of India has kept its part of the contract with a purblind literal exactness, to the grievous injury of the ryots, and with excessive fiscal injustice to the rest of India. It is high time to inquire most rigorously how the other parties to the contract have fulfilled their portion of its terms. The discouraging condition of our finances, the irritation caused by special direct taxation, and the urgent material needs of the country, all combine to support the demand for a thorough revision of the Cornwallis' Settlement, and an inquisition into the manner in which its conditions have been fulfilled by those who have absorbed so enormous a share of State property."

The same journal declares in a subsequent article that the "revision of the Permanent Settlement—is a measure now urgently called for, alike on behalf of the ryots of Bengal and the whole tax-paying public of India."

The *Daily Examiner* regrets to observe an increasing tendency "among Indian politicians to underrate the force of Lord Cornwallis' engagement with the landholders of Bengal."

"No one can doubt that in public there is a 'higher law' than legal right, or past promise. Indeed, if there were not, political revolution would be impossible. Yet this 'higher law' is a thing which cannot properly be discussed or appealed to beforehand to justify even the most insignificant change. It comes into play at that point where

Digitized by Google

expediency passes into necessity, where the strain of the past upon the present becomes intolerable. The experience of history shows that it is peoples, and not Governments, who execute this higher law; and the proof of its being such lies in the fact that the Government is an involuntary instrument in the matter. Some time or other posterity always, and inevitably, does get rid of the engagements of the past, sometimes suddenly and forcibly, sometimes by composition, sometimes by repudiation. There is no argument in favour of the Permanent Settlement in its existing form, but that of the binding nature of the engagement made by Lord Cornwallis. The question whether we should keep that engagement is one that does not admit of discussion, for nothing but necessity can justify a breach of faith, and the discussion of the necessity is a contradiction in terms. Of course, there is a distinction between political and physical necessity; but we decline to undertake the task of deciding what would constitute a necessity for the abolition of the Permanent Settlement. There is ample evidence, of a negative character at least, that no such necessity exists at present."

The *Englishman* affirmed very recently that Lord Cornwallis' Proclamation placed the Zemindars "in absolute possession of the land in Bengal, on payment of a certain fixed assessment, or rental to the State." Property, however, is now universally acknowledged to have its duties as well as its privileges, and the writer proceeded to warn the Zemindars as follows:—

"The Bengal Zemindars, especially those who have enjoyed some sort of education, are always ready to quote the Permanent Settlement, as if it exempted them from the discharge of all duties to the State, beyond that of paying what is now a ridiculously low tax upon their lands. They seem to forget that they are required to execute all the zemindari engagements which were incumbent upon their predecessors under the empire of Delhi, among which was the obligation to make new roads where wanted, and to keep in good repair those already in use. Independently of this consideration, their present obstructive conduct is fraught with much peril to themselves. It is well to be prudent in agitation. Silence, they should remember, is golden, and is one of the qualities of the wise man. But it is not wise to draw too much attention to Lord Cornwallis' blunder, or to excite inquiry into their own original position in the country. The British Parliament, we would warn them, has an unpleasant habit of correcting mistakes and rebuking folly. Have they not read how that Parliament, by enormous majorities, resolved to do away with the Established Church in Ireland? Are they not aware that the same Parliament is preparing to deal with a very high hand with landed property in that country,—a question closely analogous with that of the Permanent Settlement in Bengal? Is there any reason why the Bengal Zemindars should not be subject to the same tribunal, or why they should be excepted from Parliamentary suspension and control?"

The *Madras Mail* demands, "Can a principle of perpetuity be recognized in anything earthly?"

"Can one generation assume a right to tie up property for all time? Private individuals are not allowed to do so. The Thelusson case showed the possible inconveniences of such a power, and the power was limited by law to a period sufficient to include all interests living at the time. We see no reason why the same principle should not be equally applicable to Governments, or why any permanent settlement should not be declared liable to revision *after the decease of all now living interests in it.*"

The *Mofussilite* defends the original granting of the Settlement as a defensive measure against the perpetual exactions of the East India Company:

"The East India Company of merchants, and not the Crown of England, it was, which was then governing Bengal, and much as may be said in favour of that Company, what in Lord Cornwallis' time it mainly insisted on, was large remittances —large profits from India!

"Had Lord Cornwallis been governing the country direct for the Crown, its trade open to all as at present, no Permanent Settlement of the land-rent would have been accorded. That Settlement, however, is a solemn compact, and, so long as the Zemindars remain the public-spirited men the majority of them unquestionably are, he who proposes to break the settlement practically proposes to wound the great British Empire."

It will be observed that there is no attempt in these extracts to determine what the nature of the settlement really is. The Zemindars' version of it is assumed—and by some strange perversity *always* is assumed—to be the correct one. Towards the close of the discussion, however, a letter appeared in the *Englishman* with the signature S. P. Q. R. lifting the controversy at once out of the groove in which it was running. We reproduce it *in extenso*:—

"The Bengali 'Magna Charta' is embodied in Regulation I., 1793, and the Bengali Zemindars must stand or fall by that enactment. I take it, but it may be erroneously, that Section 7 of that Regulation contains every thing that was ever promised, or was ever intended to be promised, in regard to the non-augmentation of the land assessment. It runs as follows:—'The Governor-'General in Council trusts that the proprietors of 'land, sensible of the benefits conferred upon them 'by the public assessment being fixed for ever, 'will exert themselves in the cultivation of their 'lands, under the certainty that *they will enjoy ex-'clusively the fruits of their own good management 'and industry*, and that no demand will ever be 'made upon them, or their heirs, or successors, by 'the present or any future Government, for an 'augmentation of the public assessment *in con-'sequence of the improvement of their respective 'estates.*'

"Nothing can be simpler or clearer than the promise here made. The Zemindar shall be assured in the enjoyment of every increase of revenue from his estate which can be shown to have resulted from *his own good management and industry*, but if the augmentation can be shown to have had its origin in any source not dependent on *his own good management and industry*, then I should say, and I do not see how it can be gainsaid, that the Zemindar is as liable as any other section of Her Majesty's subjects to be assessed in respect of the gain thereby accruing. For instance, suppose it can be shown that the railway, by passing through or near an estate, has increased its value twenty-

Digitized by Google

fold, is it reasonable to affirm that wealth, which has been produced entirely, possibly, by the application of capital subscribed by members of the community other than the Zemindar who is so enormously benefitted, shall not contribute its quota to the needs of the State? I am one of those who believe it utterly unreasonable. I have not a copy of the Regulation by me just now, but I think it will be found that ample provision was made, either in that enactment or another of about the same date, for making the landholders contribute towards the maintenance of the village Chowkedars and the zemindari dâks, so that your surrender is by far too generous, when you admit that 'not the slightest allusion is made to cesses leviable in the future for the construction of roads, the diffusion of education, *or any other purpose*.' Provision was also made, or rather it would be more accurate to say, the door was left open for making provision for the protection of the ryots, and it is this safeguard which has allowed of such legislation as Act X of 1859, and I believe the door is so wide as to allow of the entire severance of the relations now existing between landlord and ryot, to such an extent, that is, as to leave the Zemindar in the position of a simple recipient of his share of the proceeds of the rent, or whatever political economists may designate it, or to the position of an annuitant on the estate; and that the Government might, if it thought right and proper to do so, receive its own share directly from the ryot; and, if this could be done, what should possibly prevent any Government from increasing the ryots' assessment, instead of permitting the Zemindar to do it as is done now? The fact is, and *here* I believe lies the whole injustice of the permanent settlement, the Zemindar, as a rule, revels in wealth which has been solely produced by the *good management and industry* of his ryots, to which he has contributed not a single unit of labour or of thought."

The journal in which this letter appears apologizes for inserting it, and declares that it would have declined the proffered contribution but that the writer "is a gentleman of unusual intelligence, of unblemished honour, and in all the relations of private life upright and estimable." The only contribution that really touches the gist of the inquiry is declared to be "so illogical, so utterly untenable, and withal so dishonest, that it is one of the mysteries of the human mind that it should ever have recommended itself to a writer of such undoubted integrity and worth." Whether S. P. Q. R. be right or wrong in the interpretation which he puts upon the Settlement, the value of his letter is the same. It lifts the controversy from the ruck it had got into, and suggests that we had perhaps better ascertain what the exact nature of the Cornwallis Settlement is. We remark at the outset that if men's sympathies are on the wrong side in this controversy, they will be slow to understand it. "All intellect is in the first place moral" says Carlyle. "It is the heart always that sees before the head *can* see: let us know that." This Zemindar controversy is eminently a controversy of this kind. It is a question between the wealthy few and the suffering many. We find throughout these provinces a body of men claiming, in virtue of the Permanent Settlement, rights in the soil to which the State itself makes no pretensions in any part of India. The notion has grown up and been fostered that the Zemindars have become by virtue of it the absolute proprietors of the soil—a claim put forward, as we have said, by the State itself in no part of India. It will be admitted that the Settlement could confer no rights upon the Zemindar that were not owned by the State. Now two facts are indisputable—*first*, that the Settlement was merely the commutation of the State claim of *khirauj* upon the land. Whatever that *khirauj* was, the right to exact it was conferred upon the Zemindar, and nothing more. The Settlement could confer nothing more, for the State owned no more. If, then, the Zemindar of to-day claims a right to anything beyond this *khirauj*, he must show some title to it other than the Settlement. It is equally indisputable in the *second* place that the framers of the measure intended that the claim of the Zemindar upon the cultivator should be as permanent as the claim of the State upon the former. Well, what have we seen from the very first, and what do we see to-day? The Zemindars claim to be the absolute owners and landlords of the soil—a claim which the State itself prefers in no part of the empire. They claim a right to enhance their rents at pleasure, and, as a matter of fact, have confiscated throughout the greater part of these territories all those occupancy rights in the land which the State itself so scrupulously respects. We are stating no doubtful fact, but that which is notorious and admitted on all hands. The Zemindars of these provinces claim to be the absolute landlords of 40 millions of people and 80,000 square miles of territory, their title being a settlement which simply assigned to them the right to collect the impost known as the *khirauj*. They have so abused the power conferred upon them as to have destroyed over the greater part of these provinces those subordinate rights which are everywhere else respected by the State itself, as having existed from time immemorial in the country. Lastly, these Zemindars themselves, in the great majority of cases, are a new race, their fortunes being built upon the ruin of the original contractors with Lord Cornwallis. Under the peremptory proceedings of our Revenue courts in the early years of the settlement, the men with whom the settlement was made were beggared and ousted to be succeeded by the present Zemindars, who, as successors to these unfortunate men, now prefer these hitherto unheard of claims upon the soil. The enormous difficulty of dealing with the question must not deter us therefrom. Dealt with it must be, in the interests of the vast population of these provinces and their descendants, whose well-being for all time depends upon our treatment of it. The evil fortunately is still but in its infancy, and it must be dealt with comprehensively and finally. It is to the land *here* as well as in every other province of the empire that we are bound primarily to look for the expenses of the State. We do not advocate a breach of faith with the Zemindars. A careful study of the question has satisfied us that the claims which they prefer will not bear examination before a competent tribunal. We are satisfied that their claims cannot be maintained, while they are fatal to the well-being of the provinces. Observe this single fact: The settlement, it is admitted, has conferred enormous wealth upon the Zemindar, and the annual payment of the *khirauj*, it is admitted, does not fall upon him but upon the cultivator. And in these

Digitized by Google

circumstances the Zemindar declares that it is breach of faith with him for the State to tax the property which has accrued to him under the settlement. He declares that the commutation of the claim to the *khirauj* which was made with so little skill as to leave the ryot wholly at his mercy, has set him free from all liability to income or property tax! These claims affect so vitally the people that they must be met decisively. The Zemindar of these provinces, who but a few years since bought perhaps at auction an interest in this unfortunate Settlement, claims by virtue of it immunities which not the most ancient freeholder in England would venture to prefer. Has the Cornwallis Settlement conferred upon the Zemindar the rights and immunities to which he lays claim? We are satisfied that it has not.

We shall not leave this subject without venturing one more word upon it. Had a settlement of this order been possible in England and become a fact there, it would long since have been subjected, in the interests of the people, to a jealous scrutiny from its very foundations. We cannot divest ourselves of the belief that the settlement is null and void *ab initio*. The East India Company, as is well known, simply administered these territories in trust for the Crown under Act of Parliament, and we have a strong belief that the settlement would be found upon examination to have been *ultra vires* a measure beyond the powers conferred upon the Company. It would be a happy circumstance for the people of these provinces—Zemindars as well as ryots—should the fact prove to be so. It is to the true interest of no class that the Zemindar's claims should be established—and, should the issue of the inquiry be that his claims are irrefragable, the future of these territories is shrouded in the gloom of an irreparable injustice. Should the Zemindar's claims be established, *all expenditure upon public works in the provinces must be permanently abandoned*, and the task of its improvement be left to a body of men who have shown but too conclusively that they feel neither interest nor responsibility of any kind in the matter. How can the State continue to construct from the Imperial treasury railways at a cost of £20,000 a mile simply to increase ten-fold the value of the lands through which they pass, while the owners of this property, the only wealthy class in the country, are held to be permanently exempted from taxation?

In a judgment delivered a few weeks ago in the High Court of Bombay by Mr. Justice Melville, the Judge laid down the rule of English law that "a grant from the Crown is construed "most strictly against the grantee and most "beneficially for the Crown, so that nothing will "pass to the grantee but by clear and express "words." In considering the question whether the rule that a revenue grant must be construed strictly against the grantee is in "accordance with justice, equity, and conscience," Mr. Melville said:—

"I think that it is so in the highest degree. "In England, the rule doubtless had its origin in "the reverence of the Court for the person and "prerogative of the king; but I prefer to base it "on a yet higher principle, and to consider it "only in its bearing upon the public good. 'No "man made the land or trees which naturally "grow thereon. They are the original inherit-"ance of the whole species.' The king possesses "them only as the representative and trustee of "the people. He may be vested with power to "alienate the property of the people, and there "may be circumstances which justify him in "doing so. Public services may be rewarded by "public gifts. But any such alienation is a loss "to the community, and the public good requires "that it should be jealously watched and res-"tricted. If it has been made, it must stand good "even though it be an injury to the community "for all time, *but it is not to be presumed that it "has been made*, nor is to be allowed out of any "feeling of indulgence for the individual. On the "contrary, it should be sternly withheld, unless it "has been expressly granted."

The question—What did the Settlement really confer upon the Zemindar?—ought to have been argued and authoritatively settled long since. Our contemporaries cannot do better than keep the question before the public mind and insist upon its being once for all settled.—*Indian Economist, 10th June* 1870.

ACT OF THE GOVERNMENT OF INDIA.

Act No. X of 1870.

THE LAND ACQUISITION ACT, 1870.

An Act for the acquisition of land for public purposes and for Companies.

Preamble.

Whereas it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

Preliminary.

Short title.

1. This Act may be called "The Land Acquisition Act, 1870:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on the first day of June 1870.

Repeal of Acts.

2. On and from such day Act No. VI. of 1857 (*for the acquisition of land for public purposes*), Act No. II. of 1861 (*to amend Act No. VI. of* 1857), and Act No. XXII. of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken*) shall be repealed.

Digitized by Google

All references made to any of the said Acts in subsequent Acts, orders, or contracts shall be read as if made to this Act.

Interpretation clause.

3. In this Act—

"Land."

The expression "land" includes benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.

"Persons interested."

The expression "person interested" includes all persons claming an interest in compensation to be made on account of the acquisition of land under this Act.

"Collector."

The expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the local Government to perform the functions of a Collector under this Act:

"Court."

The expression "Court" means in the Regulation Provinces, British Burmah, and Sindh, a principal Civil Court of original jurisdiction, and in the Non-Regulation Provinces, other than British Burmah and Sindh, the Court of a Commissioner of a Division,

unless, when the local Government has appointed, (as it is hereby empowered to do,) either specially for any case, or generally within any specified local limits, a Judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

"Company."

The expression "Company" means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent;

"Entitled to act."

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided, (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

Acquisition.

Preliminary Investigation.

Power to enter and survey.

4. Whenever it appears to the local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local *Gazette*, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

Power to mark out line.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries, and line by placing marks and cutting trenches;

Power to clear land.

and where otherwise the survey cannot be completed and the levels taken, and the boundaries and line marked, to cut down and clean away any part of any standing crop, fence, or jungle.

Previous notice of entry.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

4

Digitized by Google

Declaration of intended acquisition.

Declaration that land is required for a public purpose.

6. Subject to the provisions of Part VII. of this Act, whenever it appears to the local Government that any particular land is needed for a public purpose or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some Municipal Fund, or by a Company.

Contents of declaration.

The declaration shall be published in the local Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Declaration to be evidence.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the local Government may acquire the land in manner hereinafter appearing.

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the local Government, or some officer authorized by the local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

Land to be marked out and measured.

8. The Collector shall thereupon cause the land (unless it has been already marked out under Section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

Plan.

Notice to persons interested.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Contents of notice.

Such notice shall state the particulars of the land so needed and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned, (such time not being earlier than fifteen days after the date of publication of the notice,) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Notice to occupiers.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue district in which the land is situate.

In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post.

Power to require statements as to names and interests.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Persons required to make statements to be deemed legally bound to do so.

Every person required to make or deliver a statement under this section or Section 9 shall be deemed to be legally bound to do so within the meaning of Sections 175 and 176 of the Indian Penal Code.

Inquiry into value and claims.

Inquiry into value and amount of compensation.

11. On the day so fixed, the Collector shall proceed to inquire summarily into the value of the land and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Tender.

Power to summon witnesses.

For the purpose of such inquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production

Digitized by Google

of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

Postponement of inquiry.

12. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the inquiry to a day to be fixed by him.

Matters to be considered and matters to be neglected.

13. In determining the amount of compensation, the Collector shall take into consideration the matter mentioned in Section 24, and shall not take into consideration any of the matters mentioned in Section 25.

Award by Collector.

Award in case of agreement as to compensation.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award to be filed and to be evidence.

Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Reference where no claimant attends, or if Collector and persons interested cannot agree.

15. When the Collector proceeds to make the inquiry as aforesaid, whether on the day originally fixed for the inquiry or on the day to which it may have been postponed,

if no claimant attends,

or if the Collector considers that further inquiry as to the nature of the claim ought to be made by the Court,

or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if upon the said inquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking possession.

Power to take possession.

16. When the Collector has made an award under Section 14, or a reference to the Court under Section 15, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all incumbrances.

Power to take possession in cases of urgency.

17. In cases of urgency, whenever the local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of Section 9, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government free from all incumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land; and, in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Collector's statement on reference to Court.

18. In making a reference under Section 15, the Collector shall state, for the information of the Court, in writing under his hand—

(*a*) the situation and extent of the land needed;

(*b*) the names of the persons whom he has reason to think interested in such land;

(*c*) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, the amount of compensation tendered for the land under Section 11, or, if no claimant has attended pursuant to the notice mentioned in Section 9, the amount of compensation which the Collector is willing to give to the persons interested, and

(*d*) the grounds on which the amount of compensation was determined.

Service of notice.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under Section 9) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them to appoint on or before

Digitized by Google

a day to be therein mentioned two qualified assessors (one to be nominated by the Collector and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in Section 9, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

Power to appoint an assessor.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Determination of amount.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

Appointment of new assessor.

22. If, before such amount is determined, any of the assessors dies or desires to be discharged, or refuses, or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable, were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Powers of new assessor.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing, or neglecting, or becoming incapable.

Proceedings to be in open Court.

23. Every proceeding under Section 21 shall take place in open Court, and all persons entitled to practice in any Civil Court shall be entitled to appear, plead, and act, or to appear and act (as the case may be) in such proceeding.

Matters to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

1st, the market-value, at the time of awarding compensation, of such land;

2ndly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land;

3rdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings; and

4thly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be neglected in determining compensation.

25. But the Judge or assessors shall not take into consideration—

1st, the degree of urgency which has led to the acquisition;

2ndly, any disinclination of the person interested to part with the land acquired;

3rdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

4thly, any damage which, after the time of awarding compensation, is likely to be caused by, or in consequence of, the use to which the land acquired will be put;

5thly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

6thly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put; or

7thly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

Rules as to amount of compensation.

26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in Section 9 or in Section 19, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under Section 11.

Where the person interested has refused to make such claim, or has omitted, without sufficient reason, (to be allowed by the Judge,)

Digitized by Google

to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

Record of assessors' opinions.

27. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Judge.

Difference on questions of law.

28. In case of a difference of opinion between the Judge and assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

Agreement as to amount of compensation.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

Difference as to the amount of compensation.

30. In case of difference of opinion between the Judge and both of the assessors as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under Section 35.

Assessors' fees.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed 500 rupees.

Such fee shall be deemed to be costs in the proceeding.

Costs of proceedings taken by order of Court.

32. The costs of all proceedings taken under this part by order of the Court shall, in the first instance, be paid by the Collector.

Party to pay costs.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

Awards to be in writing.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of Section 24 and also the amounts (if any) respectively awarded under the second, third, and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Award to state amount of costs.

It shall also state the amount of costs incurred in the proceedings under this Part and by what persons and in what proportions they are to be paid.

Recovery of costs.

The costs (if any) payable by the person interested and not deducted under Section 42 may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

Appeal from Judge's decision as to compensation.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds 5,000 rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

Provisions of Code of Civil Procedure made applicable.

36. The following provisions of the Code of Civil Procedure—

(*a*) as to adding parties,

(*b*) as to adjournment,

(*c*) as to death, marriage, and bankruptcy or insolvency of parties,

(*d*) as to summoning witnesses and their attendance,

(*e*) as to examination of parties and witnesses,

(*f*) as to production of documents, and

(*g*) as to Commissions to examine absent witnesses and to make local inquiries,

shall apply, so far as may be, to proceedings before the Court.

Digitized by Google

PART IV.

Apportionment of Compensation.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

38. When the amount of compensation has been settled under Section 14, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

Dispute as to apportionment.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under Section 38, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

Determination of proportions.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

PART V.

Payment.

40. Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under Section 39, according to the decision on such appeal:

Payment of compensation to whom made.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

Proviso.

41. When the amount of the compensation has been settled under Section 14, if the persons interested shall so desire, the Collector shall, on the making of the said award, pay the amount of such compensation and take possession of the land:

Payment on making award by Collector.

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

42. In addition to the amount of any compensation awarded under Part II. or Part III. of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay 15 per centum on the market value mentioned in Section 24.

Percentage on market value.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession:

Payment with interest.

Provided that the costs, if any, payable to the Collector by the person interested shall be deducted from such amount and percentage.

Provided that, in cases where the decision of the Court under Part III. or Part IV. of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

Time of payment in appealable cases.

PART VI.

Temporary occupation of Land.

43. Subject to the provisions of Part VII. of this Act, whenever it appears to the local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

Temporary occupation of waste or arable land.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

Digitized by Google

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Difference as to compensation.

Power to enter and take possession.

44. On payment of such compensation,

or on executing such agreement,

or on making a reference under Section 43,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Restoration of land taken.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under Section 43, the Judge sitting alone shall decide the difference referred.

PART VII.

Acquisition of land for Companies.

Company may be authorized to enter and survey.

46. Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by Section 4.

Construction of Sections 4 and 5.

In every such case Section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted, and Section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

Consent of local Government to acquisition.

47. The provisions of Section 6 to Section 45 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Execution of agreement.

Previous inquiry.

48. Such consent shall not be given unless the local Government be satisfied by an inquiry held as hereinafter provided—

(1.) That such acquisition is needed for the construction of some work, and

(2.) That such work is likely to prove useful to the public.

Such inquiry shall be held by such officer and at such time and place as the local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

Agreement with Secretary of State in Council.

49. Such officer shall report to the local Government the result of the inquiry, and, if the local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council providing to the satisfaction of the local Government for the following matters, namely :—

(1.) The payment to Government of the cost of the acquisition;

(2.) The transfer, on such payment, of the land to the Company;

(3.) The terms on which the land shall be held by the Company;

(4.) The time within which, and the conditions on which, the work shall be executed and maintained; and

(5.) The terms on which the public shall be entitled to use the work.

Publication of agreement.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India* and also in the local Official *Gazette*, and

Digitized by Google

shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII.

MISCELLANEOUS.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Section 4 by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Service of notice.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by Section 4 or Section 8, or wilfully fills up, destroys, damages, or displaces any trench or mark made under Section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding 50 rupees, or to both.

Obstruction to survey, &c.
Filling trenches.
Destroying landmarks.

53. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Magistrate to enforce surrender.

54. Except in the case provided for in Section 44, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Government not bound to complete acquisition.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under Section 4 or Section 8 and not already paid for under Section 5, and shall pay such amount to the person injured.

Compensation when acquisition is not completed.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired.

Part of house or building not to be taken.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from, or by, such Fund or Company.

Payment of Collector's charges by Municipal Body or Company.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

58. No suit shall be brought to set aside an award under this Act.

Bar of suits to set aside awards under Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Limitation of suits for anything done in pursuance of Act.

59. The local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

Power to make rules.

All such rules, alterations, and additions shall, when sanctioned by the Governor-General in Council, be published in the local Official *Gazette*, and shall thereupon have the force of law.

Publication of rules.

(Signed) WHITLEY STOKES,
Secy. to the Council of the Govr.-Genl. for making Laws and Regulations.

Re-published by order of His Excellency the Governor in Council.

(Signed) R. S. ELLIS,
Chief Secretary.

Digitized by Google